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Current Topics.

An additional Lord of Appeal.

THE BILL, foreshadowed in the King's Speech, to be introduced for the purpose of authorising the appointment of two additional members of the Judicial Committee of the Privy Council—primarily, we believe, to strengthen the Committee dealing with Indian appeals—and the appointment of an additional Lord of Appeal in Ordinary, will be welcomed by the profession as necessary for the adequate equipment of the two final appellate courts. In the past various ex-judges, with characteristic willingness to serve the State whenever called upon, have lent assistance in the House of Lords on numerous occasions, and at present both Lord PHILLIMORE and Lord WRENBURY continue to share in this work. So too, does Lord BUCKMASTER, the only ex-Lord Chancellor now available. But we have recently lost two great lawyers in Lord CAVE and Lord HALDANE, each of whom was a tower of strength as bringing to the work a robust common sense, combined with a profound knowledge of law. The House of Lords, as the supreme appellate tribunal for Great Britain and Northern Ireland, and the Judicial Committee, as the supreme appellate court for the rest of the Empire, ought each to be fully staffed with the best legal talent that can be obtained. Frequently the House of Lords has been understaffed in the past, for the simple reason that judges were not always available. Much is to be said for the view that at least five judges should invariably take part in the hearing of appeals, and this, it is obvious, is only possible if the requisite number can be secured. Whether the addition of one Lord of Appeal in Ordinary will permit of this being done in every instance may be doubtful, but there is certainly ample justification, in the amount of work coming before the House, for the appointment contemplated by the Government. Speculation is already busy in the endeavour to designate the person to be appointed, should the Bill pass both Houses. Various names are being discussed, among others, that of Lord Justice SANKEY, but upon whom the choice will ultimately fall remains, we suppose, the secret of the PRIME MINISTER alone, with whom the appointment rests.

The Companies (Consolidation) Act, 1908, s. 212.

A CASE of considerable importance to the profession came before the court the other day when the Divisional Court, sitting in Companies Winding-up, gave its decision in *Re Parkes Garage (Swadlincote) Ltd.*, and *Re The Companies (Consolidation) Act*, 1908. The case turned upon the effect of s. 212 of the Act, and the facts were these: Within three months prior to the winding-up the company had issued a floating-charge debenture to secure past debts. The company at that time was insolvent and shortly afterwards the debenture was paid off. On winding up, the liquidator issued a summons to set aside the charge created by the debenture and to recover the money paid. The learned County Court judge before whom the summons was heard declared the floating charge to be invalid. This was to be expected as the company at the time of the creation of the charge was insolvent, and the charge was given to secure old debts. The learned judge, however, went on to hold (1) that the old debts had merged in the debenture; and (2) that, as he had already held the debenture to be invalid, the money paid under it must be repaid. The debenture-holder appealed. EVE and MAUGHAM, J.J., allowed the appeal, affirming once again that the only effect of s. 212 is to invalidate the charge: It does not affect the debt itself. The report of the case does not state what arguments were used before the County Court judge, but at any rate the High Court has clearly laid down the effect in such cases of s. 212.

Attachment of Wages.

IN A notice of Sir EDWARD PARRY'S new book, "The Gospel and the Law," a reviewer in one of the weekly journals, after referring to the learned author's denunciation of imprisonment for debt—stigmatized as "legalised extortion and blackmail"—puts forward the suggestion that county court judges should be empowered to make orders charging the debtor's earnings at the source with a weekly deduction in favour of the creditor. Something like this can be done at the present time in Scotland, to a limited extent; that is to say, the creditor may "arrest"—that is, attach the wages due to his debtor to the extent that they exceed £1 per week. A similar process existed in England also till 1870, but by the Wages Attachment Abolition Act of that year, it was provided that thereafter "no order for the attachment of the wages of any servant, labourer or workman shall be made by the judge of any court of record or inferior court." In *Booth* v. *Trail*, 1883, 12 Q.B.D. 8, STEPHEN, J., in the course of the argument, said: "To my mind that Act [i.e., the Act of 1870] seems to have been intended to apply to inferior courts of record and not to the High Court"; but whatever the intention of the framers may have been, it appears to be reasonably clear from the language used that the Act applies to all courts, superior and inferior alike. However this may be, the Act certainly applies to county courts and any attempt to repeal the prohibition against the attachment of wages of those classes of employees specifically referred to is unlikely to find favour with anyone save creditors who, although, in general, a deserving body, will find it difficult to persuade the Legislature to reverse its decision of 1870.

Exemptions from Schedule A Tax.

THE EXEMPTIONS contained in No. VI of Schedule A apply to (*a*) colleges or halls in any British University; (*b*) hospitals, public schools and almshouses; and (*c*) literary and scientific institutions. As a condition of exemption it is necessary that the portion of the premises exempted should be occupied by the charity, and any portion of the premises let off is not included in the exemption. Other portions of the premises which are outside the scope of the relieving section are (*a*) in the case of a college, any portion of the premises occupied by a member of the college; (*b*) as regards a hospital, to any portion occupied by an officer whose total income (including the annual value of the portion occupied) amounts to £150; (*c*) as regards literary and scientific institutions, to any portion occupied by any officer of the institution. The funds of hospitals, public schools, almshouses and literary and scientific institutions are granted exemption from income tax in so far as they are expended on repairs and maintenance of the buildings and grounds.

Income Tax Assessment Notices.

WHILE IT is admittedly unjust that persons assessed to income tax should not at once be served with a notice of the assessment, an aspect of the matter which is, perhaps, more far-reaching, is the increasing practice of Inspectors of Taxes to issue notices of assessment. No provision is made for notices of Schedule D assessments, but it has long been the recognised practice that they should be issued. The forms of notice bear the name of the Clerk to the Commissioners for the division, and it is clear that it is the duty of this official to prepare and to issue them. Each Clerk to Commissioners should insist that a notice of every assessment made should be sent to the taxpayer from his office. The issue of notices by inspectors has little to commend it, and it would seem to be but a further attempt of the Revenue officials to usurp the powers of the Commissioners and their officers. This is a matter which should receive the attention of Parliament and definite provision for individual notices of Schedule D assessment should be made.

Tender.

DECISIONS ON what constitutes a legal tender are comparatively infrequent nowadays, doubtless for the reason that the law on the subject is fairly well settled. A recent case in Alberta, however—*Dunn* v. *Hanson*, 1928, 3 W.W.R. 178—touches a point of some importance, the point, namely, when actual production of the money is excused. The ordinary rule is that actual production of the appropriate coins, or their equivalent in notes (where notes have been made legal tender) is necessary. But the circumstances may be such as to dispense the debtor from producing the money. Thus, in an old case, where the defendant went to the plaintiff and told him that he had £8 18s. 6d. in his pocket, which he had brought for the purpose of satisfying the debt, but the plaintiff said that he "need not give himself the trouble of offering it, for that he (the plaintiff) would not take it," it was held that there had been a good tender, the plaintiff having dispensed with the necessity of the money being actually produced. In the Alberta case an offer to pay the money was refused solely on the ground, which was held to be erroneous, that it was made too late, and it was held that there had been a good tender notwithstanding that there had been no actual production of the money. As is generally known, the Coinage Act, 1870, made gold coins legal tender for a payment of any amount; silver coins for a payment of an amount not exceeding £2; and bronze coins for payment of an amount not exceeding 1s. War-time necessities swept away the gold coinage from our every-day currency, and substituted Treasury notes for £1 and 10s., which were made legal tender. Bank of England notes were also made legal tender by s. 6 of the Bank of England Act, 1833, but only "for all sums above £5 on all occasions on which any tender of money may be legally made." On a strict construction of that section a £5 Bank of England note was not a legal tender in respect of a debt of £5, but this absurdity has been abolished by s. 1 (2) of the Currency and Bank Notes Act, 1928 (which comes into operation on 22nd November, the appointed day fixed by His Majesty by Order in Council), which says, in effect, that Bank of England notes shall be legal tender for the payment of any amount, as well by the Bank itself as by other persons.

Can an Immoral Work be Stolen?

IT HAS been repeatedly held, as in *Stockdale* v. *Onwhyn*, 1826, 2 C. & P. 163, and *Poplett* v. *Stockdale*, *ibid.*, 198 (both of which cases concerned "The Memoirs of Harriette Wilson," who was a notorious courtesan) that there can be no property in an immoral work. In *Walcot* v. *Walker*, 1802, 7 Ves. 1, Lord ELDON said that the policy of the law did not permit a libellous publication to be considered property, and see also *Glyn* v. *Weston Feature Film Co.*, 1916, 1 Ch. 261, which involved consideration of a book called "Three Weeks," then notorious. Now, if there can be no property in an indecent work, it seems arguable that it cannot be stolen, since excluded by the Larceny Act, 1916, s. 1 (3): "Everything which has value and is the property of any person . . . shall be capable of being stolen." Certainly, if a retailer sold an indecent book on credit, he could not recover the price. Would then the court order restitution of the book, or even sentence a thief who took it without leave? There does not appear to be any direct English authority on the point. In the United States, however, it was held before the war that wine in "dry" states, such as Iowa, Massachusetts and Michigan, could, although forbidden to the public, be the subject of larceny, and there is a similar decision as to gaming implements in West Virginia (though in Ohio there is one to the contrary effect). It is well known that indecent books or pictures, the regrettable works of great authors or artists, may have a high pecuniary value, and it may be concluded with some confidence that a thief would not be allowed to steal them with impunity. The possession of an indecent book or picture is not an offence, unless kept for sale, and the cases quoted above concern the copyright. The conclusion may therefore be reached that there is property in the physical book or picture within the Larceny Act, 1916, though there is no copyright to be pirated. The case of *Gordon* v. *Chief Commissioner*, 1910, 2 K.B. 1080, in which the plaintiff successfully sued the Commissioner for money taken in illegal street betting and seized by the police, may perhaps be quoted in support of the view that the court will assist an owner to recover property which a moral and law-abiding person would not possess.

The Refusal of a Maintenance Order.

A CURIOUS case is reported of an application for a maintenance order by a wife, made to and refused by Mr. BINGLEY at Marylebone. Some years ago the woman, who was then living with her husband, was sent to prison for stealing. She returned to him after sentence, he took her back, she offended again, and a similar sequence occurred. At length the husband refused to take her back, and she applied for the maintenance order. The husband, in resisting it, handed in a newspaper report, which no doubt contained an account of the woman's delinquencies, and the magistrate, after observing (if correctly reported) that it was "a bit stiff" to come to him to ask for an order in such circumstances, refused it, adding that the guardians were at liberty to take action against the husband. With respect, we may question whether the learned magistrate had jurisdiction to refuse the order at all. On pp. 650-1, *ante* ("A Miscarriage of Justice"), we pointed out that the combined effect of *Jones* v. *Newton and Llandiloes Guardians*, 1920, 3 K.B. 381, and *Thomas* v. *Thomas*, 1924, P. 194, was to give a wife who had deserted her husband a *locus*

poenitentiæ, but that this sauce for the goose was denied to the gander. The doctrine of the *Newton Case* was that a wife can desert her husband to the scriptural record of seventy times seven, and then come back to him and claim her full rights, provided only she has not been guilty of adultery. Thus, on the assumption that a woman imprisoned for stealing or other criminal offence deserts her husband, the wife was entitled to return after sentence, and her husband's refusal to receive her constituted desertion on his part. The above assumption, however, is almost certainly incorrect, for desertion implies volition to stay or to go, which a person sent to prison is not allowed to exercise. In *Pulford* v. *Pulford*, 1923, P. 18, it was pointed out that cohabitation did not cease merely because the wife was removed to a poor law asylum. The removal took place by an act of superior authority, and imprisonment is on the same footing—and indeed, if a wife stole a razor or tobacco for her husband's use or consumption, no doubt she would have committed a criminal offence, but it certainly would not imply any lack of conjugal affection, rather the reverse. The inequality revealed in the *Newton Case*, as contrasted with *Thomas* v. *Thomas*, is worth the attention of the Legislature ; but so, of course, is the whole law of separation and divorce, the revision of which has been shirked (the word is not too strong, in view of the findings of the Royal Commission nearly twenty years ago) by every successive Government.

A Volunteer is Killed.

THE VERDICT of a coroner's jury at Windsor raises some nice points of law. The inquest was on a young policeman, who had pluckily tried to stop a runaway horse, which was drawing a dust-cart belonging to the Windlesham Urban Council. The jury found that the death resulted from "civil negligence on the part of the council, who knew the animal was restless, and should have taken proper care that it should be under proper control." Whether a coroner's jury ought to take on itself any finding on a civil issue is a question which may be met by the observation that no one can prevent them doing so. Such a finding is merely an expression of opinion which has no legal force. Assuming, however, that an action was brought against the council by the policeman's dependants under Lord CAMPBELL'S Act, and the jury found "*scienter*" against the council, thus excluding such authorities as *Hammack* v. *White*, 1862, 11 C.B. (N.S.) 588, *Cox* v. *Burbidge*, 13 C.B. (N.S.) 430, and *Holmes* v. *Mather*, 1875, L.R. 10 Ex. 261, the question would remain whether damages could be recovered in respect of a risk which in one sense was not accidental, but was deliberately taken. A policeman has multifarious duties as appears from the day by day evidence of a sitting commission, but to stop a runaway horse at the risk of life can hardly be one of them. The dead man was really carrying out the moral duty of all good citizens in doing that which was within his power to prevent others being injured. An injury to a volunteer was the subject-matter of *Heasman* v. *Pickford*, 1920, 36 T.L.R. 818, but there, although the plaintiff was an infant and had no intention of entering into a contract of service, it was held that the doctrine of common employment prevailed. In *Eckert* v. *Long Island Railway Co.*, 1871, 3 Am. R. 721, 43 N.Y. 502, the plaintiff's intestate, while rescuing a child from being run over by an approaching train, was himself killed. The issue was raised whether the deceased contributed to the accident by his own negligence. GROVER, J., said: "Under the circumstances in which the deceased was placed it was not wrongful of him to make every effort in his power to rescue the child, compatible with a reasonable regard for his own safety. It was his duty to exercise his judgment as to whether he could probably save the child without serious injury to himself. If he believed he could, it was not negligent to make an attempt so to do, although believing that possibly he might fail and receive an injury himself . . . The law has so high a regard for human life that it will not impute negligence in an effort to preserve it, unless made under such circumstances as to constitute rashness in the judgment of prudent persons"—a pronouncement of excellent sense which our courts might well follow. *Roebuck* v. *Norwegian Titanic Co.*, 1884, 1 T.L.R. 117, is very shortly reported, but appears to have been decided on the same lines. The Scottish decision *Wilkinson* v. *Kinneil Cannel Co., Ltd.*, 1897, 24 R. 1001, is to a similar effect, though a majority of four against three judges showed that the point was a difficult one. Under the Workmen's Compensation Act such cases as *Rees* v. *Thomas*, 1899, 1 Q.B. 1015, and *Culpeck* v. *Orient Co.*, 1922, 15 B.W.C.C. 187, indicate that a policeman trying to save life or property in an emergency would be held to be acting within the scope of his employment.

Destruction of Weeds.

MOST GARDENERS, amateur or professional, will have a some time or other experienced an unwelcome invasion of their carefully tended gardens by innumerable and varied weed seeds blown from adjacent neglected land. Legislation to ensure the destruction of neighbouring injurious weeds when necessary was provided by the Corn Production Acts, 1917 and 1920—originally war-time measures calculated to assist growing crops—and these provisions are still retained in the Corn Production Acts (Repeal) Act, 1921. The Act requires the Minister of Agriculture and Fisheries to serve a notice in writing upon the occupier requiring the destruction of the weeds, failure to comply rendering the occupier liable to a fine not exceeding £20, and a further fine not exceeding £1 for every day during which the offence continues after conviction. Enthusiastic gardeners, who would doubtless inflict the maximum penalty on offenders, will be gratified by the recent conviction before the Croydon County Bench of the owner of half an acre of land in a residential quarter who had not complied with a notice, served after a complaint by a neighbour, requiring him to destroy all noxious weeds on it. Nothing had been done to the land between the 3rd July, the day notice was served, and the 17th September, by which time the weed seed had been wind-scattered. The defendant, who had been fined in 1926 in respect of a similar omission on the same land, was fined £5 and three guineas costs. In the well-known case of *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, it was laid down that for the occupier of land to be liable for damage caused to adjacent property by anything on his land, the mischief must have resulted from something which would not naturally have come upon the land. Liability would not arise, however, apart from statute, where anything by its nature likely to cause mischief came naturally on the land and caused damage to adjacent property. *Giles* v. *Walker*, 24 Q.B.D. 656, was an interesting and early case of this nature. Forest land in the occupation of the defendant, a farmer, grew large quantities of thistles after it was brought under cultivation, and the thistle seeds were blown on to the adjoining farm land of the plaintiff, took root and caused damage. A County Court jury held that the defendant had been negligent in not cutting the thistles and judgment was entered for the plaintiff. On appeal, Lord COLERIDGE, C.J., said: "I never heard of such an action as this. There can be no duty as between adjoining occupiers to cut thistles, which are the natural growth of the soil. The appeal must be allowed." An interesting contemporary article based on this case appeared in 34 SOL. J., p. 635, under the title "Liability for not mowing thistles." At the time of writing a modern case of "thistles" comes to hand. The Somerset County Agricultural Committee summoned a landowner on the 1st inst., for failing to comply with a notice served under the Act (*supra*) requiring him to cut down or destroy injurious weeds. The weeds, thistles, grew in a field planted as a plantation, and the defendant contended that the successful growth of the trees had been to some extent assisted by the weeds. The case was dismissed on the ground that the defendant had not acted unreasonably.

Landlord and Tenant Act, 1927

By S. P. J. MERLIN, Barrister-at-Law.

IV.

The Landlord's Position where the Tenant claims a New Lease.

THE last article dealt with the landlord's position where the tenant elected to claim monetary compensation under s. 4 of this Act. This week an endeavour will be made to show briefly what are the rights, as well as the liabilities, of a landlord, where the tenant prefers to pursue the alternative course of claiming a "new lease" under s. 5.

The tenants' associations of this country have agitated for many years past in favour of some sort of fixity of tenure for tenants of business premises. This s. 5 is the first instalment in English law towards establishing such a right in connexion with this class of tenancy or holding. It does not go very far, but it will undoubtedly apply to and secure new leases in a considerable number of cases, and moreover will indirectly have a corrective effect in many others, in that it will deter a certain type of landlord from constraining his tenants into agreeing to pay exorbitant rents in preference to vacating the premises—to which their goodwill is attached—at the end of their leases.

The majority of landlords, however, have much less to fear from the provisions of this Act with regard to grants of new leases than was at one time anticipated. Where they are agreeable to the sitting tenant continuing in his holding they can either arrange the terms of a new lease in an amicable way with the tenant, or failing such arrangement they can safely leave it to be fixed by the tribunal under the provisions of s. 5 (2), which in relation to such contested cases lays down the rule "that the rent fixed by the tribunal as the rent payable under the new tenancy shall be such rent as the tribunal may determine to be the rent which a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises."

On the other hand where a landlord is not agreeable to renew the lease, and has a good and reasonable ground for refusing to do so, the provisions of the Act have—by wide anticipatory measures—safeguarded the just interests of the landlord in almost all the conceivable cases where good grounds for objecting to the grant of a new lease could be put forward by a lessor.

For example, it is expressly laid down in s. 5 "that the grant of a new lease under this section shall not be deemed to be reasonable if the landlord proves (1) that the premises are required for occupation by himself, or, where the landlord is an individual, for occupation by a son or daughter of his over eighteen years of age; or (2) that he intends to pull down or remodel the premises; or (3) that vacant possession of the premises is required in order to carry out a scheme of re-development; or (4) that for any other reason the grant of such a lease of the premises would not be consistent with good estate management, and for this purpose regard shall be had to the development of any other property of the same landlord" (sub-s. (3) of s. 5).

Furthermore, the onus is expressly on the tenant in all cases where he asks for a new lease to prove not only that he is a suitable tenant, and that he would be entitled to monetary compensation under s. 4, but that the sum which could be awarded to him under that section would not compensate him for the loss he would suffer if he removed to and carried on his trade or business in other premises.

Lastly, it should be carefully noted that the provisions relating to the grant of a new lease are not in their character in any way mandatory or directory, but leave the matter one entirely for the *discretion* of the tribunal, the exact words of the Act hereon being that the tribunal "may, if it considers that the grant of a new tenancy *is in all the circumstances reasonable*, order the grant of a new tenancy for such period not exceeding fourteen years and on such terms as the tribunal may determine to be proper" (s. 5, sub-s. (2)).

It is well known that there are many cases in well ordered estates where landlords have synchronised the falling in of a large number of leases, having in mind some inchoate but genuine scheme of re-development or rebuilding of the property at some more or less distant future time, and it is readily appreciated that in such circumstances it would be unfair, meanwhile, to grant a new lease to any tenant whose premises were within the ambit of such scheme, if such a grant would hold up the proposed re-development for a period of years. For such cases the Act again contains full safeguards to the landlord in sub-s. (4) of s. 5, which enacts that: "Where the landlord proves to the satisfaction of the tribunal that the premises, though not required immediately on any such ground as aforesaid, will be so required after the lapse of a certain period, the term for which the lease is granted shall not extend beyond the expiration of that period, unless the lease is made subject to a condition that the landlord may at any time after the expiration of that period, on giving not less than six months' notice in writing, resume possession of the premises if he requires them for any such purpose as aforesaid."

Even in those cases where a landlord cannot prove any such present intention (as to future re-modelling of his property) as would enable him to rely on the provisions of sub-ss. (3) and (4) of s. 5, but does consider it possible that he, or his successors in title, may, during the currency of the proposed new lease, require the premises for the purpose of a scheme of re-development, he may request the tribunal to grant the lease subject to the safeguarding condition in sub-s. (5) of s. 5, which lays down that every lease granted under this section shall, if the landlord so requires, be subject to a condition that if at any time after the expiration of seven years from the commencement of the term thereof, the premises are required for the purpose of carrying out a scheme of re-development, the landlord, on satisfying the tribunal that the premises are so required, and on giving not less than twelve months' notice in writing to the tenant, may determine the lease and resume possession of the premises upon payment of such compensation as the tribunal may determine to be the value of the unexpired residue of the term of the lease.

This sub-section gives the landlord what may—at the least—be a valuable option, and one which may make certain sites and properties more readily saleable to purchasers desirous of rebuilding for their own particular purposes, such as banks, multiple and chain shop companies, and others.

The Act, in addition to providing the ordinary run of landlords with all reasonable safeguards, has also given those landlords who represent the public weal still further protection, in that in all cases where new leases are granted against such landlords, they may only be granted subject to a condition that the landlord may at any time on giving not less than six months' notice in writing resume possession of the premises if he requires them for the purpose of occupation, etc. (see s. 5, sub-s. (6)).

This sub-section has been criticised as creating a large class of privileged landlords, as they include all government properties and railway and dock companies who own a great number of peculiar and valuable business premises around them, but it was considered that the interests of the community as a whole should take precedence of individual tenants, and the result is that a business tenant of one of these "landlords" has in some respects an inferior status under this Act to that enjoyed by the ordinary class of business tenant (see also hereon s. 4, sub.-s. (1) (*g*); s. 19, sub.-s. (1) (*b*) and s. 24 (1)).

The Act, in addition to the other safeguards dealt with above, also gives a landlord who thinks he would prefer to retire from the many new cares recently placed on the shoulders of property owners, the alternative right to offer to sell his interest in the premises to the tenant at such a

price as, failing agreement, the tribunal may determine (see s. 5, sub-s. (7)).

Moreover, it is to be noted that by sub-s. (8) no second claim for a new lease under s. 5 shall arise in respect of goodwill attaching to the premises and attributable to the trade or business carried on thereat *during the term of a new lease* granted in pursuance of s. 5. This provision debars a tenant from applying at the end of the term of his "new lease" for yet another new lease, founded on the fact that he had created further and fresh goodwill during the period of such new tenancy. But while the Act thus prevents interminable renewals, it leaves intact the tenant's alternative right to monetary compensation for loss of such fresh goodwill if any be proved under s. 4.

Lastly, the Act, in s. 6, gives the landlord the right to offer his tenant alternative accommodation in lieu of compensation or a new lease. Pruned of certain words, the said section enacts that the tenant shall not be entitled to compensation under s. 4 or to a new lease under s 5 if within one month (after the tenant has made a claim or served a notice) the landlord serves on the tenant notice that he is willing to grant to the tenant at such rent and for such term as the tribunal may consider reasonable, a tenancy of other premises which, in the opinion of the tribunal, would reasonably preserve to the tenant the goodwill of his business.

Looking at s. 5 as a whole, with its comprehensive provisions for safeguarding the landlord against undue hardship, it would seem as if the draughtsmen responsible for the Act have anticipated almost all possible permutations of circumstances which may come before the tribunal, and that they have performed their difficult task with admirable skill and fairness to all parties concerned.

Matrimonial Jurisdiction of Justices:

Time Limit for Adultery—Retrospective Effect of Discharge.

THE case of *Dutch* v. *Dutch*, *Times*, 18th October, and a group of cases connected with it, are concerned with two points:—

(1) Whether the time limit imposed by s. 11 of the Summary Jurisdiction Act, 1848, applies to applications to justices to discharge, on the ground of adultery, orders made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925; and

(2) Whether the discharge of an order on the ground of adultery can be retrospective to the date of the act of adultery, or takes effect only from the date of the adjudication discharging the order.

(1) We discussed, at p. 220 of Vol. 71, the decision in *Waller* v. *Waller*, 1927, 71 SOL. J. 232; 43 T.L.R. 285, which we could not refrain from criticising upon the ground that a wife had only to keep secret her adultery until six months after her last adulterous act, to be secure from a discharge of her order.

The Divorce Court has shrunk from this extreme consequence of its own decision, and by *Dutch* v. *Dutch* the six months will run either from the date of the last act of adultery (the court swept aside the fantastic suggestion that it would run from the first act of adultery) or from the husband's "knowledge or means of knowledge of the alleged act." This is a rational rule which is based on a reasonable analogy with the law as to condonation.

(2) The first case which came to trouble the peace of those who considered that a husband who had established the adultery of his wife and procured the discharge of an order on that ground was not in law liable to pay any arrears of maintenance accruing after an act of adultery, was *Jones* v. *Jones*, 1924, 40 T.L.R. 794. That case almost concluded the point against such view. There was, however, as pointed out in Lieck and Morrison's "Matrimonial Jurisdiction of Justices," just a loophole left. In *Jones* v. *Jones* the discharge was not expressed to be retrospective, and where an order of discharge did purport to be retrospective, the Divorce Division might perhaps reconsider the matter.

Then came *Outerbridge* v. *Outerbridge*, 1926, 43 T.L.R. 33, where it was held that the wife could enforce arrears up to the date of discharge. The case was argued on the technical point whether an order which, by the discharge, had ceased to exist, could be enforced at all. The discharge did not purport to be retrospective.

Next came *Waller* v. *Waller*, *supra*. There one of the grounds of appeal was "that the justices were wrong in law in discharging retrospectively the order as from 30th September, 1915, the date upon which the justices had found as a fact that adultery had been committed by the wife."

Upon this the learned President said: "The wife appeals on the ground that the justices could only discharge the order as from the date of the order of discharge. The contrary proposition has not really been argued . . . but I can have no doubt that the power of the justices was to make an order which should take effect as from its date. The wife therefore succeeds, in my judgment, as to that ground of appeal with regard to the point of time at which the justices' order should take effect."

As the case decided (on the time limit point) that the justices had no power to discharge at all, it may be said that the foregoing was *obiter*; but it is remarkably definite, and, following the other cases noted above, concluded the matter for subordinate courts.

It is, however, remarkable that the magistrate's order upheld by the Divorce Court in *Dutch* v. *Dutch* was one discharging an order of maintenance with retrospective effect from the date of adultery, and some think this alters the position as it stood after *Waller* v. *Waller*, *supra*. There is certainly a new element of confusion, but it seems reasonable to suppose that the learned President, in *Dutch* v. *Dutch*, not being invited to consider a secondary point, did not do so. What he and Mr. Justice HILL have upheld is the magistrate's refusal to apply the time limit, and not, save by implication (of little value in face of the preceding cases) his giving the discharge retrospective effect, though, it may be, there is now, in this particular instance, no way for the wife to test the question of her right to arrears to the date of discharge.

The Salary of a Mayor.

A MOTION was introduced recently in the Cardiff City Council in the following terms: "No intoxicants shall be provided by the Cardiff Corporation out of public funds, including the Lord Mayor's salary, except for medical purposes." It was ruled out of order by the Lord Mayor, on the ground that the Council had no power to dictate how he should spend his salary. This raises an interesting, and it may be an important, point of law. The Lord Mayor apparently based his ruling upon the decision of ROMER, J., in *Attorney-General* v. *Corporation of Cardiff*, 1894, 2 Ch. 337. This case arose out of the celebrations on the occasion of the marriage of the then Duke and Duchess of York. The Council had passed a resolution adding £650 to the mayor's current salary for the purpose of the celebrations, but instead of paying the money to the mayor, had paid it into a separate account and applied it directly for celebration purposes. In deciding upon the legality of this resolution ROMER, J., held that the Council was entitled to make a reasonable addition to the mayor's salary to meet anticipated additional expenditure, but that resolutions to that effect must be *bonâ fide*, i.e., the additions must be real additions to the salary, and not colourable additions to enable the Council under pretence of adding to the mayor's salary to authorise expenditure which would

otherwise be *ultra vires*. This decision by no means laid down the proposition that a council may not dictate to the mayor how he shall spend his salary. It is true that on p. 343 of the report, the learned judge said: "No addition should be made to the mayor's salary except it is intended merely for the purpose of the salary, so that the mayor may deal with it in any way he thinks fit as part of his salary." If this passage is taken and read, divorced from its context, it is not impossible to extract from it a *dictum* to the effect that a mayor may deal with his salary as he thinks fit. But if this passage is read as a part of the whole judgment, it will be seen that ROMER, J., in no way intended to convey that opinion, but used the form of words quoted merely to illustrate more forcibly his *ratio decidendi*, viz.: that the addition to the salary must be *bonâ fide*. If this be the true view of the judgment in *The Attorney-General* v. *Corporation of Cardiff*, then we must look elsewhere for authority for the proposition that a council may not dictate to its mayor how he shall spend his salary. It is no easy matter to find authority either for or against the proposition. In the ordinary relation of master and servant it would be quite competent for the master to stipulate that a certain portion of the salary of the servant should be devoted to certain objects, say, to insurance or a welfare fund, etc. But, in the case of a statutory relationship such as that of council and mayor, different considerations apply; the relevant statutory provisions must be considered. By s. 15 (4) of the Municipal Corporations Act, 1882, the mayor "may receive such remuneration as the council think reasonable." This is the relevant statutory provision, and to decide whether the council has the power of dictation or not we must interpret this section. Unfortunately, there seem to be no authorities to guide us, and on a mere reading of the section it is difficult to come to a definite opinion. On the face of it, the section would seem only to refer to quantum of remuneration, but on further consideration the section would seem to permit the council in deciding upon a reasonable remuneration to consider not merely the quantum, but the uses to which it may be put by the mayor. The simplest interpretation would certainly be the former, but the point is an open one.

Mr. R. M. Welsford, M.A., LL.B.

THE portrait which we are presenting with this issue of THE SOLICITORS' JOURNAL, and which it is a privilege to include in our gallery of "Legal Celebrities," is that of Mr. ROBERT MILLS WELSFORD, solicitor, the President of The Law Society for the year 1928-29. Educated at Brighton College—where he was head of the school—he graduated at Trinity College, Cambridge, and was articled to Mr. JOSEPH ADDISON, of Messrs. Linklater, Hackwood, Addison & Brown—now Linklaters & Paines. He was admitted in 1885 and remained with them seven years. He then joined the late Mr. EVERARD G. THORNE in partnership under the style of Thorne & Welsford, at 17 Gracechurch Street, and on the retirement from the present firm of Messrs. Phelps (Father and Son) & Sidgwick they amalgamated with the remaining partners, Messrs. Biddle, Gait & Sidgwick, the name of the firm being "Biddle, Thorne, Welsford & Sidgwick," at 22 Aldermanbury, the present offices of the firm which is now known as "Biddle, Thorne, Welsford & Gait." On the retirement of Mr. BIDDLE in 1920, Mr. WELSFORD became the senior partner. He is a valued member of the Council of The Law Society, to which he was first elected in 1910. During the whole period of his service he has taken a prominent part in the activities of that influential and important organisation devoting considerable attention to the question of legal education, upon the subject of which he gave a notable address to The Law Society at its annual meeting last month (72 SOL. J., p. 684). He was Chairman of the Education Committee and also a Member of the Professional Purposes Committee and of the House Committee, in addition to which he served upon the Compulsory Membership Committee—1920-25. He is an inveterate worker and although he has few pastimes and plays golf occasionally, almost his only recreation to-day is fishing. Mr. WELSFORD has three sons, all of whom have adopted the law as a profession, viz.: Mr. GUY M. WELSFORD, who was called to the Bar in 1923; Mr. FREDERICK M. WELSFORD, who was admitted in 1923 and is now a partner in his father's firm, and Mr. ALAN M. WELSFORD, who was admitted in 1926 and is at present associated with the firm of Messrs. Slaughter & May.

A Conveyancer's Diary.

Conveyance in consideration of a Life Annuity.

It has come to our notice that a doubt exists in the minds of some practitioners as to the form of conveyance appropriate in the case of a sale of freehold land in consideration of the reservation of a life annuity to the vendor. This doubt is enhanced by the fact that two, at least, of the books of precedents are not in agreement over this matter.

The form given in 1 Prideaux, 22nd ed., p. 775, is a vesting deed, with a trust deed, p. 777, while that given in the Encyclopedia of Forms and Precedents, 2nd ed., vol. 15, p. 740, is an ordinary conveyance giving an equitable charge to secure the annuity with a power of sale for trustees to sell or mortgage the land as attorneys of the purchaser to raise arrears of the rent-charge.

We can understand that the form in "Prideaux" is the safe, if not the only satisfactory, method of giving effect to this transaction, for the other method at best could only be effective to pass the legal estate in the land if the conveyance is a true conveyance on sale; thus we think that subsequent purchasers would require and be entitled to demand conclusive evidence that the conveyance was not merely a device to cloak a voluntary settlement by way of family arrangement where a vesting deed and trust deed are not employed.

It is unusual for sales to be effected in consideration of a life annuity, except where some form of relationship, such as husband and wife or guardian and ward, exists between the vendor and purchaser; for the rent-charge would not be secure if it exceeded the rents and profits, and unless it does exceed them it would not usually represent the true price.

If any such relationship exists the conveyance *prima facie* comes within S.L.A., 1925, s. 1 (1) (v), and constitutes a settlement which must be effected by a vesting deed or the fee simple will not pass to the purchaser (*ib.*, s. 4) who becomes a tenant for life: *ib.*, s. 20 (1) (ix).

But assuming that the vendor and purchaser are not connected by any ties of relationship and, difficult though it would be, it can be proved conclusively that the conveyance was not in effect a voluntary settlement, there remains a further objection to the form of conveyance given in the Encyclopedia.

Unless the conveyance is made in the form of a vesting deed and S.L.A. trustees are appointed, the owner of the land can only sell the fee simple free from the annuity with the concurrence of the annuitant.

Unless a contract for sale is made, under L.P.(Amend.) A., 1926, s. 1, for the sale of the land subject to the annuity, a subsequent purchaser may and should insist on—

(1) the annuity being discharged before sale; or

(2) the creation of a special settlement under S.L.A., 1925, s. 21, though, if S.L.A. trustees are approved by the annuitant, it will be unnecessary to appoint a trust corporation or trustees approved by the court; or

(3) a trust for sale *ad hoc*: L.P.A., 1925, ss. 2 (as amended) and 42 (1), though, if the trustees are approved by the

annuitant, it would be unnecessary to apply to the court or to appoint a trust corporation.

For these reasons it appears to us better, in the first instance, to anticipate these objections and to settle the property by vesting and trust deeds; the annuitant being a party will of necessity approve the S.L.A. trustees.

The adoption of any other course must either render the conveyance nugatory or give rise to increased expense.

The alternative to the method adopted in 1 Prideaux, p. 775, is to convey the land to trustees upon trust for sale, and to make the annuity (see 1 Prid., p. 781) payable out of the rents until sale, and thereafter out of the income of the proceeds of sale. For this purpose the parties may either appoint a corporation, properly constituted under the regulations, to act as a trust corporation, or they may appoint not less than two or more than four individuals to act as trustees. The approval of the court is not then required, for the annuitant, being a party, is bound by the conveyance on trust for sale. A purchaser is not concerned with the trusts affecting the proceeds of sale: L.P.A., 1925, s. 27.

Landlord and Tenant Notebook.

Recovery of Arrears of Rent owed by Tenant of Premises within the Rent Acts.

The Rent Acts are always presenting fresh and novel problems for determination by the courts, and the latest of them is the question whether on the death of a tenant of premises within the Rent Acts arrears of rent owed by him may be recovered from the member of the family who is entitled to be regarded as the new statutory tenant under s. 12 (1) (*g*) of the Rent Act of 1920.

That paragraph provides, *inter alia*, that the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow, or is a woman, such member of the tenant's family so residing as aforesaid as may be decided, in default of agreement, by the county court.

The point referred to above arose for consideration in the case of *Tickner* v. *Clifton* (72 Sol. J., p. 762), the material facts being as follows:

The plaintiff was a landlord of certain premises, let to one, Clifton, on a yearly tenancy. Clifton died in September, 1926, owing £25 10s. in respect of half a year's rent. The defendant, his daughter, had resided with her father on the premises, and on his death presumably became the "tenant" for the purpose of para. (*g*) of s. 12 (1) of the Act of 1920. The plaintiff landlord sued the defendant as the tenant entitled to remain in possession under the Act, to recover the arrears of rent owed by her father.

The Divisional Court, reversing the judgment of His Honour Judge Sturges, held that the arrears could not be recovered from the defendant.

It would seem that, in such cases, arrears of rent are to be treated in the same way as other debts owed by a deceased person, and that therefore such arrears would be payable by the personal representatives out of the estate of the deceased; and it seems contrary to all principle to hold the person entitled to remain in occupation of the premises, by virtue of the special rights conferred by the Act, as responsible for the payment of such arrears. If such a person can be held liable it is submitted that he or she can only be held liable as executor or administrator of the deceased tenant, and this seems to be the view taken by the court. Thus in his judgment, Swift, J., said:—

"It had been contended that the defendant was liable to pay her father's arrears of rent, on the ground that she was either an executrix *de son tort*, or an equitable assignee of the term which her father had held. Possibly she had so dealt with her father's estate that she had rendered herself liable to account as far as the estate could, but there was no evidence of that having been so, nor that she was an assignee of the term. She was neither executrix *de son tort*, nor an equitable assignee. She occupied the premises as a statutory tenant, and her statutory tenancy began with her. She had to observe the terms of the original contractual tenancy (s. 15 of the Act), but she was not responsible for what occurred before her statutory tenancy began. Neither under the statute, in common sense or in common justice, could she be made responsible for any debts which her father had incurred before his death."

Our County Court Letter.

THE SCOPE OF THE SILICOSIS REGULATIONS.

In the recent test case of *Templeton* v. *William Parkin & Co.* at Sheffield County Court, the issue was whether the applicant was a workman or an independent contractor. The applicant was a grinder and the respondents were cutlery manufacturers, who had either employed or done business with the applicant for twenty-six years on the following terms, *inter alia*: (1) The applicant employed his two sons and another person down to 1926, the applicant himself being paid at piece rates for work he did for the respondents, and paying his men's wages out of his own receipts; (2) on a shortage of work the applicant could work for other firms, although the respondents had a prior claim; (3) the applicant paid for the power, light and coal to drive the grinding wheels, but he went to the respondent's manager to ask what his work was, and could only enter their factory in working hours; (4) the applicant paid rent for a trough, but no rent was paid when the trough was not actually used, and as the payments fluctuated from week to week it was not on the same basis as rent between landlord and tenant; (5) the respondents paid health and unemployment insurance stamps in respect of the applicant and his employees, and had thus represented themselves to the ministries as employers; (6) the applicant and one of his sons had had previous accidents in respect of which compensation had been paid by the respondents. The applicant became ill in October, 1927, and had not worked since, and on 13th March, 1928, he was certified as suffering from silicosis caused by his employment as a grinder, and he therefore claimed compensation at 30s. a week for incapacity as from 24th January, 1928, under the Metal Grinding Industries (Silicosis) Scheme, 1927. The respondents' case was that a servant was one who should be subject to the commands of his master as to the manner in which he should do his work, whereas no control could have been exercised in the above case, and there was no control in the background. The applicant could please himself when he did the work he contracted to do, and the most important result was that there was no overtime, and therefore no payments on that account. It was pointed out for the applicant that there was no necessity to exercise control, and that that question did not arise. His Honour Judge Lias observed that the respondents' foreman had always been allowed to see that work was progressing properly, and while the applicant was not paid for overtime as such he nevertheless made his profit out of the prices paid for the work. The applicant was bound to finish work in a certain time, if necessary, but as he knew how to do the work, he never received directions from the respondents as to how it should be done. The respondents could not dismiss any employee of the applicant, but they could require the applicant to do so, and the whole agreement was terminable by a month's notice on either side. His Honour held that certain points in the above relationship were incompatible with the position of an independent contractor, e.g., (1) the respondents could decide in what order and in what time the applicant should execute work given out to him; (2) they could and did insist

that the applicant should work overtime and employ extra hands, or that he should dismiss any workmen he employed; (3) they could obtain precedence for their work over other work which they allowed the applicant to accept elsewhere, and could compel him to postpone or return undone the work of other firms. The applicant was therefore an independent contractor as regards such outside work, but the difference in regard to the applicant's relationship with the respondents was sufficient to show that he was not an independent contractor in dealing with them. An award of 30s. a week was therefore made in favour of the applicant as a workman.

At the same court, in the case of *Makin* v. *Needham, Veall and Tyzack*, the applicant was a table blade grinder, and claimed compensation in respect of silicosis caused by his occupation. The applicant was totally disabled, and his case was that he did whitening work after 1st July, 1927, when the above scheme came into force, but the respondent's case was that (1) the applicant was chiefly employed as a foreman glazier after that date, although he spent some time in touching up blades; (2) after the said date the applicant was not employed for more than the eight hours per week stated as the necessary minimum on work which came within the scope of the regulations; (3) a workman could not obtain an award for a disease contracted before the above date, as it was not intended to impose a retrospective liability upon employers. His Honour Judge Lias remarked that if the last contention were correct a large inroad would be made into the benefits of the Act, and he regretted having to deal with figures in a case where a man was obviously suffering from silicosis as a result of his employment. On the evidence as to hours and work, submitted by each party, he was not satisfied that the applicant came within the scheme, and judgment was given for the respondents.

Practice Notes.

DIVORCE.

From time to time there are judicial comments to the effect that it is a pity that wives entitled to a divorce prefer to sue for a judicial separation.

Wife petitioners, however, not infrequently choose the remedy of judicial separation in preference to that of dissolution purely in the interests of the children of the marriage.

Supposing there to be vested in the husband a power of appointment amongst his children over a considerable fortune, how may or may not the interests of the children of the existing marriage be jeopardised by dissolution? It is interesting to examine the situation.

Any bargain or agreement between husband and wife, prior to decree absolute, as regards the exercise or release of the power, would, almost inevitably, taint the matrimonial proceedings with collusion, and there is the further consideration that any appointment made by the husband simultaneously with such proceedings might be deemed to be a fraud on the power, and subsequently set aside. This latter difficulty is fully illustrated in *Cochrane* v. *Cochrane*, 1922, 2 Ch. 230. Sargant, J., says, at p. 252—"... Had Sir Ernest agreed to make the appointment for the purpose of obtaining some pecuniary advantage for himself there is no doubt that the agreement would have been bad. And no difference can, in my judgment, be made by the fact that the advantage at which Sir Ernest was aiming was one of another kind—namely, freedom to re-marry. Such an advantage, though less sordid than the other, is just as much a personal advantage, and just as alien from the purposes for which the power of appointment was entrusted to him. It was obviously contrary to the intention of the creator of the trust that Sir Ernest should bind himself antecedently to give an enormous preference to the child of his first marriage over any children of a subsequent marriage, and should do so, not in the *bonâ fide* exercise of a discretion as between the two families, but for the purely personal reason of obtaining an immediate release from his existing marriage."

It is to be noted that in *Cochrane* v. *Cochrane* the husband and wife's agreement as to the exercise of the power of appointment had been confirmed with other terms of settlement of permanent maintenance proceedings by the Divorce Court, only to be set aside ten years later as having been a fraud on the power. The Divorce Court, therefore, would not now be likely to countenance an exercise of such a power of appointment by a husband as part of a compromise of maintenance proceedings.

To what extent, then, can the court preserve for the children after dissolution some share of their possible interests in the fund, bearing in mind, supposing there to be a judicial separation only, that in the events of their mother pre-deceasing their father and their father's re-marriage they would run the risk of losing the whole, by an unimpeachable exercise of the power in favour of children of the second marriage?

Where the power is incorporated in a marriage settlement, the court, on a petition for variation of settlements, usually varies the power so as to restrain the husband from exercising it in favour of an after-taken wife or her children during the lifetime of the former wife.

Again, on the assumption that the father is enjoying the life interest of the fund for the children of the dissolved marriage, the court may preserve some of the benefit by awarding them maintenance during the lifetime of their father, thus preventing him from making an adverse appointment during his lifetime, save at severe personal sacrifice to himself. But that is as far as the court can go, it having no power to order security for the maintenance of children so as to attach the corpus of the fund.

Legal Parables.

XV.

The Leader with a Conscience.

A successful King's Counsel, who commanded the highest fees, found himself much troubled with heart-searchings after reading an article in a daily paper, in which a clerical journalist showed clearly that the present-day scale of income enjoyed by great silks was a public scandal and a reflection upon the competence of the bench. Therefore, he instructed his clerk to accept in future only one-half of what was offered. And the solicitors' clerks asked the great leader's clerk whether his chief suffered from incipient insanity, or some such complaint, or words to that effect; and the leader's clerk only shook his head sadly and said it seemed a sin to turn good money away. When the solicitors heard of it they also shook their heads, and began to send their briefs elsewhere. Thus the conscientious leader began to feel the draught, and his clerk besought him to give up his fads. But the good man said he was proud to suffer for his principles (though he soon looked neither pleased nor proud). But after a time one or two solicitors thought it over, and decided to give him another trial, just to see whether he really had gone off or whether it was a harmless eccentricity that did not affect his work. And, behold! the King's Counsel conducted his cases with all his accustomed fire and acumen. Then the word went round that he was just as good as ever, and twice as cheap. So the solicitors' clerks began to stand in a queue to offer him briefs. Then the great man, finding he could not take all that were offered him, sought the advice of the clerk; and the clerk smiled knowingly, and indicated that he thought his employer was pretty knowing too! Of course, he said, the fees must go up, and we must take only the cream of the work. And the leader found his income greater than ever and his conscience clearer than ever before.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Searches.

Q. 1468. I shall be glad of your opinion on a question arising out of your "Legal Parable VI" in THE SOLICITORS' JOURNAL. The usual practice on a purchase is to search up to and against the last purchaser for value. If the careless solicitor's client had re-sold, presumably some purchaser's solicitor would eventually have been held liable for negligence, for his search would have revealed nothing registered against his vendor, the careless solicitor's client. The question, therefore, arises whether a purchaser is entitled to require production of all official certificates of search since 1926, and in their absence bound to search against all preceding owners in the previous thirty years. Will you kindly deal with this point in an early issue?

A. The practice is growing for a purchaser to ask for all official certificates of search granted since 1925, and no doubt the law will give recognition to this practice of conveyancers. We expressed the view in these columns soon after the new Acts came into force that no purchaser could be regarded as safe who had not searched or obtained official certificates of search against all estate owners since 1925.

Vendor and Purchaser—STIPULATION THAT PURCHASER SHALL PAY VENDOR'S SOLICITOR FOR DEDUCTION OF TITLE—VALIDITY.

Q. 1469. A has agreed to sell Whiteacre to B for £300. A's solicitor has submitted the contract to B's solicitor for his approval. There is a provision in the contract requiring B immediately on completion to pay to A's solicitor the vendor's costs of deducing title and completing conveyance. B's solicitor objects to such a condition, contending that its insertion is contrary to the provisions of s. 48 of L.P.A., 1925, and, if agreed to, could not be enforced against B. Section 48 merely renders void stipulations preventing a purchaser from employing his own solicitor. The stipulation sought to be inserted in the contract does not actually restrict a purchaser in choosing his own solicitor, but merely provides that he must pay the vendor's charges. In the footnote to s. 48 of L.P.A., 1925, it is suggested that a condition requiring the purchaser, in a sale by auction, to pay to the vendor's solicitor an amount equivalent to the vendor's charges of deducing title, etc., *by way of contract fee* is void and unenforceable against a purchaser. If that is so, does it follow that B's solicitor's objection is well founded in the case of a contract for sale by private treaty?

A. The mischief against which s. 48, *supra*, is aimed is the restriction of the purchaser's liberty to choose his own solicitor. The proposed condition does not do this, and the opinion here given is that, although such a bargain as is suggested is highly unusual, it is not necessarily void if a purchaser voluntarily chooses to be bound by it. It is void, however, so far as the expenses include any expense forbidden to be thrown on a purchaser by s. 42, and *prima facie* would only include scale fee for preparing abstract and conveyance.

Dissolution of Medical Partnership.

Q. 1470. A purchased an equal share from B in his practice of a general medical practitioner, and the parties have now been in partnership for some years. One of the clauses of the partnership articles provided that, if either partner should desire to dissolve the partnership and to carry on the practice of a medical practitioner or any other form of medical practice in and around the town in which they are now practising, or elsewhere, on his own account, and in opposition to the other partner, and either by himself or with the assistance of or in partnership with another or others, such partner should be entitled to do so upon giving the other partner six calendar months' previous notice in writing and on the expiration of such notice, the partnership should be dissolved, and the partner giving such notice should pay to the other partner such compensation as might be mutually agreed upon, and upon failure to agree, as might be determined by arbitration, and in arriving at such compensation, the arbitrator should have due regard to the nature of the practice each partner had carried on, and the nature of the practice which the partner giving the notice proposes to carry on in the future. (The partnership articles do not say what the compensation is in respect of). B has accordingly served notice terminating the partnership, and as from December next each party will be at liberty to set up in full opposition to the other, and this they propose doing. A now claims compensation, alleging that by the service of the notice causing the dissolution the saleable value of his practice has been diminished. A alleges that there is a custom in the medical profession whereby a share in a partnership is recognised to be worth two years' purchase, whereas the price of a single-handed practice is worth only one and a half year's purchase, and A alleges that by reason of the service of the notice to dissolve, his assets have been reduced in value from two years to one and a half years' purchase, and claims the difference as compensation. Is there any such custom in the medical profession, and if so, how far could A urge this under the circumstances which have arisen? B contends that both are equally affected by the notice, and that whether or not there exists a custom such as is alleged by A, that custom does not enter into the matter, and that the articles must be given their true legal construction. There is no mention in the articles that the basis of calculating amounts in dispute shall be made to depend on custom, and B suggests that the word "compensation" referred to in the clause refers to the benefit (if any) accruing to him, B, by reason of the service of the notice, and that in considering the benefit due regard shall be given to the nature of the practice each partner carried on and the nature of the practice B intends henceforth to carry on. That, under the circumstances, neither will have any advantage over the other, as they will both practice in opposition, and that no compensation is therefore payable. A also alleges that in medical practices the basis of arriving at figures is worked on the average of "gross" receipts. Surely "net" and not "gross" receipts should be taken.

A. There is a custom in the medical profession to recognise a share in a partnership as worth from one to three years' purchase, but the value of a single-handed practice is only from six months' to two years' purchase. A has therefore taken a fair average in only claiming six months' purchase as the reduced value in respect of which he should receive compensation. A can urge this in the circumstances which have arisen, being the very state of affairs contemplated in the agreement. B is wrong in suggesting that customs do not enter into the matter, as it is well recognised that all documents can only be given their true legal construction by bearing in mind the basis upon which the parties contracted. A custom must therefore be expressly excluded to render it inapplicable. It is impossible to accept B's contention that "compensation" means the benefit to himself, as although the articles do not say what the compensation is in respect of, he word connotes the damage or loss suffered by the passive

party, in this case the partner upon whom the notice is served. The contention that neither will have any advantage over the other is in direct opposition to the terms of the agreement, which expressly provides for a money payment by the dissolving partner. A is also correct in saying that in medical practices the figures are arrived at on the average (i.e., over three years) of "gross" and not "net" receipts. The reason is that working expenses are inextricably involved in personal expenses, the surgery being part of the house, and the motor being used for private as well as for professional purposes. An assistant often has board and residence with the doctor's family, and the only items which can be separated are drugs and instruments. The net figure arrived at for income tax purposes is based on deductions for expenses which are fixed under rules of general application, and are unsatisfactory in private negotiations.

The Marking of Hackney Carriages.

Q. 1471. Is it an offence for a carriage licensed as a hackney vehicle to travel about without a hackney plate, and what is the authority? It appears from No. 31 of the Road Vehicles (Registration and Licensing) Regulations, 1924, that if the hackney licence is *less* than the licence for a private car charged under para. 6 of the said schedule, then the vehicle must carry a hackney plate. I can find no corresponding provision which states that a hackney carriage need not carry a hackney plate if the hackney licence is more than the ordinary licence under para. 6. I can find no authority for saying that a hackney vehicle is at liberty under any circumstances to stand and ply for hire without carrying a hackney plate?

A. It is an offence for a hackney carriage to travel without a hackney plate, by virtue of the Roads Act, 1920, s. 11, which imposes similar penalties to those prescribed by s. 6 (2) for failure to fix the index mark and registration number, viz., a fine of £20 for a first and £50 for a second or subsequent offence. A hackney carriage for which the licence exceeds the amount of the ordinary licence is impliedly exempt from the requirement to carry a hackney plate, as, although the Roads Act, 1920, s. 11, provides that every such vehicle shall exhibit a plate, the regulations of 1924 restrict the operation of this provision to vehicles for which the amount paid is less than the ordinary licence. There is no actual authority for the last proposition in the question, but in many districts, usually seaside resorts, the local authority license the vehicles, and beyond a certain seating capacity hackney plates are not required.

Agricultural Holdings—Notice to Quit.

Q. 1472. Landlords of a holding gave the tenant the usual year's notice to quit expiring on 25th March, 1929. They wish to sell the holding during the currency of the notice to quit, and the tenant is willing to agree that the notice shall be valid.

(1) Would a letter on the following lines be sufficient: "I hereby expressly agree in accordance with the provisions of s. 26 (2) of the Agricultural Holdings Act, 1923, that the notice to quit the holding at Blackacre given by you to me and da ed the 23rd day of March 1928, shall be valid and remain in force, and shall not be affected by the making of any contract for sale of the holding during the currency thereof or in any other way in consequence of s. 26 (1) of the said Act"?

(2) Should this document be stamped? If so, how much?

A. The reference in the second line of the draft letter should be to sub-s. (1), as sub-s. (2) has ceased to operate, and the last line appears to be superfluous. The objection to the above draft is that it appears to be designed for general use and not to apply to a particular contract for sale, so that it amounts to a contracting out of the Act contrary to s. 50. The letter should therefore refer either to a sale to a particular purchaser, if by private treaty, or to "any contract which may be entered into on a sale by auction on the . day of next." The sub-section requires the agreement to be prior to such contract of sale, and it should be stamped with 6d., but although the section uses the word "agreed," the above letter is more in the nature of a consent, and it may be argued that a stamp is unnecessary.

Industrial Diseases—Workmen's Compensation Act.

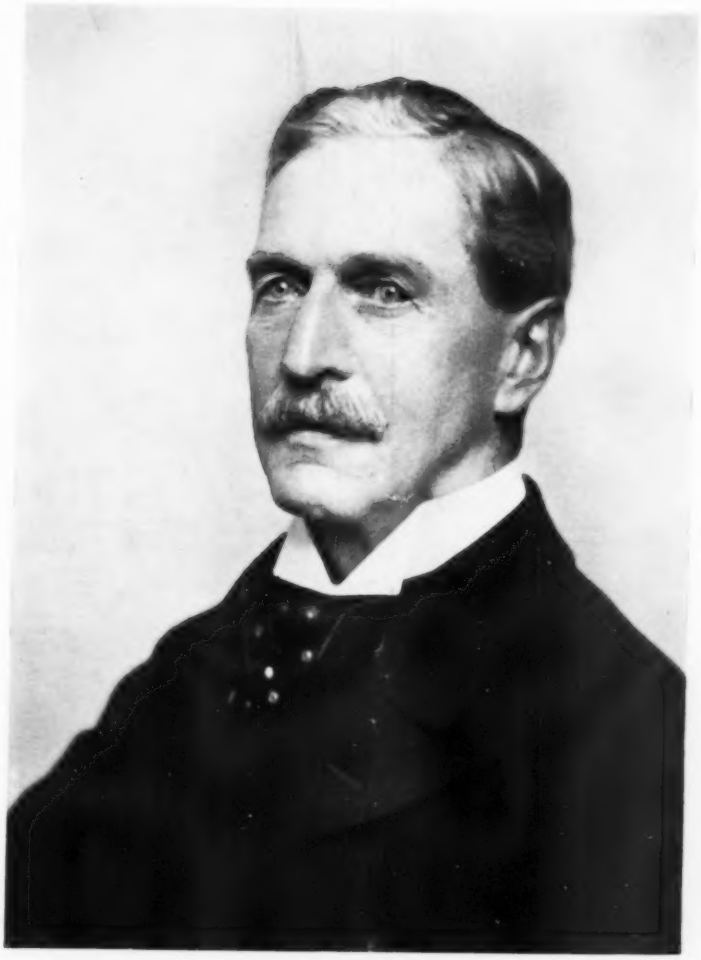
Q. 1473. Under s. 43 of the Workmen's Compensation Act, 1925, two conditions require to be fulfilled before a workman is entitled to compensation—(*a*) a certifying surgeon's certificate (Form No. 3); (*b*) proof that the disease was due to the nature of the employment. The certifying surgeon's certificate in the form given (Form No. 3) does not specifically state that the disease is due to the nature of the employment. Is an employer therefore "aggrieved" on the receipt of such a certificate if he intends to rely on the defence that the disease is not due to the nature of the employment, and is it necessary for him, when a certificate of disablement is served upon him, to appeal to the medical referee? If he does not so appeal does he retain the right to refuse compensation later on, and is the certificate of disablement merely a preliminary step leaving open any defence in arbitration proceedings to follow?

A. An employer is not "aggrieved" within s. 43 (1) (*f*) if he intends to rely on the above defence. For the purposes of that defence it is unnecessary for him to dispute the workman's condition, and there is no object in his appealing to the medical referee. The omission to appeal does not preclude the employer from refusing compensation later, but the certificate is more than a preliminary step, and does not leave open any defence. It would not leave open, for example, the defence in *Chippendale* v. *High Explosives, Ltd.*, 11 B.W. C.C. 221, where the certifying surgeon certified the wrong disease, viz., poisoning by T.N.T. The employers did not make T.N.T., and the certificate should have specified poisoning by nitrous fumes. The certificate, however, would leave open the defence that arsenical poisoning was not due to dipping the employer's sheep, but was self-administered.

Nuisance by Electric Pneumatic Road-Drills.

Q. 1474. A client of ours contemplates taking immediate steps to stop the use of electric pneumatic road-drills, which are being used by the workmen of a borough council outside his shop premises within the London County Council area on the ground that the noise of such drills is shattering the nerves of himself and his family. Could you refer us to any case which has been decided on the point or give us any information with respect to it?

A. There appears to be no reported decision with regard to the above drills, but in *Harrison* v. *Southwark and Vauxhall Water Company*, 1891, 2 Ch. 409, the complaint was in regard to lift-pumps used for sinking a shaft, under statutory powers, the noise having continued during night and day for three weeks. It was held that an annoyance which was temporary and for a lawful object did not amount to a nuisance in law. In *Colwall* v. *St. Pancras Borough Council*, 1904, 1 Ch. 707, it was admitted that an electric generating station was a nuisance unless it was excusable as being temporary, but the defence was that the nuisance could be removed in time by experiment and alterations. It was held that this was not a temporary nuisance within the first-named case, *supra*. The questioners do not allege that the drills are used at unreasonable hours, nor that there is interference with the trade or business of the client. The latter should therefore be advised that as the nuisance is only temporary and a necessary evil brought about by modern conditions the court will not interfere.



MR. ROBERT MILLS WELSFORD, M.A., LL.B.

PRESIDENT OF THE LAW SOCIETY,

1928–29.

Correspondence.

Law and Literature.

Sir,—Besides Mr. Rubenstein, the penultimate paragraph of your article under the above heading, on page 620 of your issue of the 22nd ult., should have referred to Mr. J. J. Nelson, a solicitor of Kidsgrove, Staffs, whose book "A Man of Parts" is (like your article) well worth reading.

Your reference to Judge Ruegg's literary works prompts the inquiry whether that learned author in his first book "John Clutterbuck" overlooked 9 & 10 Vict., c. 62, when he suggested in Chapter XIX that a coroner had kept a certain stone for the Crown as a deodand.

25th September. SOLOR.

Parochial Church Council—Aquiring Land for Lawn Tennis.

Sir,—In your answer to Query 1454 (72 SOL. J. 725), you appear to have overlooked the point that generally Diocesan Boards of Finance (which is in existence in a diocese is the diocesan authority) are s. 20 companies not for profit, and a conveyance under s. 5 of the P.C.C. measure is in effect a conveyance to a charity, so that once this is completed no mortgage or lien could be created without an order of the Charity Commissioners and the usual official procedure followed.

Moreover, diocesan authorities do not encourage mortgages, and in connexion with those for which my firm act, they will not consent to accept properties subject to a mortgage or allow a mortgage afterwards, as you will recognise their position would be impossible, if all the various properties vested in them, in effect as custodian trustees, were mortgaged, which would be practically all over the diocese.

What is the objection to, say, your contributor having the conveyance to not more than four local trustees *for sale* and when the property was clear of the charge, it could if desired, be vested in the diocesan authority.

I have had a fairly long experience in these matters and recognise the difficulty most solicitors have in these "measure" cases, and this point of mortgages is constantly cropping up, which is not, perhaps, generally known, and it occurred to me that as you have had a question on the subject it might be very useful to deal with it in THE SOLICITORS' JOURNAL.

London, A SUBSCRIBER.

30th October.

[This correspondent is thanked for his information as to the practice of the diocesan authorities with which he is concerned. The Parochial Church Council, however, *qua* the land proposed to be acquired, would not be an endowed charity in the scheme suggested for the whole purchase-money would be borrowed. Such interest as the council acquired in the land would be on the gradual payment off of the debt by subscriptions and voluntary donations, which might be held to exempt it from s. 55 of the Charitable Trusts Act, 1855, under the well-known authorities decided on s. 62 of the 1853 Act. Our contributor was given no details as to the constitution of the diocesan authority, but possibly such constitution would not affect its position as custodian trustee. The scheme suggested in the question, under which the diocesan authority was to take property mortgaged up to the very hilt, would hardly appear attractive to such a body, which could reject it under cl. 5 (i) of the Measure of 1921. By pointing out the likelihood of this rejection and anticipating it, our contributor could no doubt have saved himself trouble, but he considered that his answer would be more helpful if he assumed the diocesan authority would do what it could to forward a scheme of practical benefit in spite of technical difficulties. The body most concerned with these difficulties would appear to be, not the Diocesan Board or the Council, which would obtain the use of the land without paying for it under the scheme, but the X.Y. Company, which would risk the whole purchase-money if anything went wrong. Possibly a simpler plan than that suggested by our correspondent would be for the X.Y. Company to purchase the land, and grant a lease of it to a church club to be formed for the purpose, with an option of purchase. On such purchase the club could then, if thought desirable, convey the unincumbered property to the authority by way of gift to the Council under s. 5 of the measure.—ED. SOL. J.]

Landlord and Tenant Act, 1927.

Sir,—I was interested in the report in your issue of the 27th inst., of the case under the above Act before Judge Farrant at the Cambridge County Court, on the 18th inst. You state that you believe this to be the first case under the Act.

It may interest you to know that on the 10th inst., His Honour Judge Hargreaves dealt at the Tunbridge Wells County Court with an application under s. 3 (1) of the Act for a certificate that a contemplated improvement was a proper improvement. The applicant was Mr. Cecil Baldwin, a garage proprietor, and the respondent was a Mrs. Garrett, his landlord, and I appeared for the applicant and Mr. Berry of Messrs. Berry & Hewlett, Tunbridge Wells, for the respondent. The applicant had, himself, served a plan showing the proposed improvement (which was a petrol pump, the cost of which was estimated to be about £120) and the plan showed the site of the proposed pump but did not show the exact nature of the construction. No specification accompanied the plan, but His Honour held that the plan in itself was a sufficient specification within the section, and particularly so as the respondent in her objection had merely stated that "she did not want anything buried in her ground."

An interesting point arose in the course of the application inasmuch as the applicant's tenancy expires on the 29th July, 1929, but the tenancy agreement contains an option to renew, which had not actually been exercised at the time of the application. His Honour held that for the purposes of s. 2 (1) (c), the three years' condition would be covered at any time if the relationship of landlord and tenant existed, although the actual improvement was carried out during the currency of a previous tenancy.

After hearing a surveyor who was called for the respondent His Honour adjourned the application to the 7th November, 1928, to enable the applicant to call a surveyor.

There is little likelihood of the matter coming before the court again as the respondent has entered into a contract to sell the property to the applicant, and it seems to me that this, or a similar result, will be the effect of a large number of proceedings under the Act.

Tonbridge, F. B. JEVONS.

31st October.

[Our correspondent is thanked for the information contained in his letter and is also referred to a similar case the particulars of which appeared in our issue of the 3rd inst., 72 SOL. J., p. 736.—ED., *Sol. J.*]

Consent to Assignment of Leases.

Sir,—A considerable number of building leases for long terms reserving a ground rent exist in the North of England, and contain a covenant not to assign without the consent of the lessor. The alteration effected by s. 19 of the Landlord and Tenant Act, 1927, does not appear to have yet attracted the notice of some solicitors for lessees and their assignees, who still apply for the consent in cases where it is now unnecessary.

I observe that in the recent edition of Woodfall's Landlord and Tenant, although the 1927 Act is set out in the Appendix, no reference is made in the text to the alteration of the law, which should, I suggest, be noted on pp. 299 and 315.

6th November. A LESSORS' SOLICITOR.

[The provisions of the Act will, no doubt, soon become more familiar. The criticism of "Woodfall" is, of course, a matter for the editors and publishers.—ED., *Sol J.*]

Defaulting Solicitors.

Sir,—The bonding of solicitors has recently been once more under discussion.

A very material point which I have not seen stressed is the fact that every defaulting solicitor must drive a number of fresh clients to the Public Trustee, a solicitor who is bonded by the Government.

Why should solicitors give work away in this manner, when the remedy lies in their own hands?

Gray's Inn, W.C. RONALD RUBINSTEIN.
October 31st.

[We hope to deal with the wider question involved in an early issue.—ED., *Sol. J.*]

Reviews.

The Law on the Liability of Property Owners and Occupiers for Accidents. By WILLIAM FINDLAY. 1928. London: Sweet & Maxwell Limited. xxxi and 383 pp. £1 1s. net.

The author of this new work has set out "to state the law applicable to the liability of owners and occupiers of real property for accidents occurring on or near such property." He points out that "although the tests of liability are sometimes expressed in one country in different terms from those of others, it is not too much to say that the rules applicable . . . are substantially the same throughout the English-speaking world." Hence, decisions and judgments delivered in different parts of the British Empire and in America have been incorporated to illustrate the various principles enunciated.

Though from the academic standpoint there may be room for criticism of the arrangement of the subject matter, the practitioner will find in that respect little wherewith to quarrel. The various types of circumstances are dealt with in separate chapters. Thus Chapter I contains a statement of the law as to claims by tenants against landlords for accidents arising on premises let to tenants and remaining under the tenant's control. Chapter II is entitled: "Claims for accidents sustained by persons other than tenants residing in, or employed at, the premises let"; and the claims of visitors to an owner or tenant are dealt with in the third chapter. Each of the twenty-one other chapters deals in like manner with a different set of circumstances. Such an arrangement enables a busy practitioner to find the information he requires without much waste of time.

Another point which an academic lawyer might criticise is the bareness of the statements of the different principles. There is, on the whole, but little explanation or comment on the decisions and principles. This, however, is no great drawback from the practitioner's point of view. What to him matters is that the principles are tersely stated and are illustrated by a mass of cases chosen from the different English-speaking countries. It is particularly convenient that the facts and decisions in so many Scots, Colonial and American cases have been given.

The practitioner will find this new work very useful.

Constitutional Laws of the British Empire. By LEONARD LE MARCHANT MINTY. London: Sweet and Maxwell Limited. 1928. xvii and 258 pp. 15s. net.

Dr. Minty has set himself the comparatively humble task of writing a book designed to help students through their examinations, but he is fully justified in expressing the hope that it may serve as a useful introduction to wider study on the part of those readers whose horizon is not bounded by the examination paper. Within the limits that he has set for himself his treatment is both lucid and readable, and for the most part also accurate.

The chapter on the "Dominions and the Treaty-Making Power" requires revision. To speak of Parliament as "making treaties" is apt to mislead the elementary students for whom the book is intended, and in a brief allusion to the Treaty of Lausanne, Dr. Minty appears to lend his support to the indefensible heresy that a Dominion can be at war when Great Britain is at peace. Indeed the whole question is really too complicated to be satisfactorily dealt with in nine pages, and in future editions Dr. Minty would do well to allow himself more space for the treatment of what is, perhaps, the most important constitutional problem in the Empire. Again, it may be said that Dr. Minty has really attempted an impossible task in trying to summarise in a few pages the constitutional law of the United States, and this has led him into such inaccuracies as the statement (p. 151) that "State Judges are appointed by the State Governors." A comparative study of British and American constitutional law would be invaluable for more advanced students, but it is beyond the scope of an examination text-book.

These criticisms do not affect the greater part of the book, which should be of real value to those for whom it is intended,

H. A. S.

The Lawyer's Companion and Diary and London and Provincial Law Directory for 1929. MICHAEL E. ROWE, B.A., LL.B. 83rd Annual Edition. 1928. pp. 230 and 604. Stevens and Sons, Ltd. Cloth boards, 7s. 6d. net.

This useful diary and compendium has made its appearance with its usual regularity. It contains amongst a mass of other legal and general information lists of Judges, practising Barristers, Solicitors and Chartered Accountants, Tables of Costs and Court Fees, Stamp Duties, Time-tables of the Courts, Alphabetical Index to the principal practical Statutes, List of Public Statutes of 1927-28, Income Tax and Estate and other Duties, Interest and Discount Tables, etc. A useful feature (introduced we think for the first time) is that the County Court is shown after every town with the Bankruptcy and Companies Winding-up jurisdiction. The whole contents have been prepared and collated with such skill as to render the work indispensable to the practising solicitor. H.

Books Received.

The Journal of The Auctioneers' & Estate Agents' Institute of the United Kingdom. Vol. 8. Part II. November, 1928. Issued only to members.

Middle Temple Hall. Notes upon its History, collected from the Records of the Middle Temple Society. J. BRUCE WILLIAMSON, a Master of the Bench. With Ten Illustrations. Crown 8vo. 62 pp. Obtainable at the Hall Library or Treasurer's Office, Middle Temple, E.C.4. 1s. net.

Massachusetts Law Quarterly. Vol. XIII. No. 6, August, 1928 (last number of Vol. XIII). Massachusetts Bar Association.

The Scots Law Times. Incorporating The Scottish Law Reporter. 1928. Parts 43 & 44. October 27th, 1928. Annual sub. £2 10s.

Suggestions for The Practice of Commercial Arbitration in The United States. Prepared by The American Arbitration Association. 1928. Medium 8vo. pp. 247, with Index. Oxford University Press: Humphrey Milford, Amen House, Warwick Square, E.C.4. 8s. 6d. net.

British Taverns, their History and Laws. Lord ASKWITH. 1928. Demy 8vo. pp. 274, with Index. George Routledge & Sons, Ltd.

The Sacco-Vanzetti Case. Transcript of the Record of the Trial of Nicola Sacco and Bartolomeo Vanzetti in the Courts of Massachusetts, and subsequent Proceedings. 1902-27. Medium 8vo. Vol. 1. pp. 1 to 1092. Vol. II, pp. 1093 to 2266. With Index to Stenographic Minutes. Vol. III, pp. 2267 to 3478. 1928. Henry Holt and Company.

The New Coal Age. The Journal of Low Temperature Carbonisation and The Scientific Treatment of Coal. Vol. I. No. 2. October, 1928. 1, Buckingham-street, W.C.2. 6d. net.

Taxation. A Newspaper devoted to the Law, Practice and Incidence of Imperial and Local Taxation. Vol. II. No. 58. 3d. November, 1928. Gee & Co. (Publishers), Ltd., 6d. weekly.

Mew's Digest of English Case Law. Quarterly Issue. October, 1928. Containing Cases reported from 1st January to 1st October, 1928. Aubrey J. Spencer. Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd.

Isalpa. The Monthly Journal of The Incorporated Society of Auctioneers and Landed Property Agents. Vol. II. No. 22. October, 1928. 26, Finsbury-square, E.C.2.

Ministry of Health. Statement of the Amount of the Local Rates per pound of Assessable Value for the Financial Years 1927-28, and the Average Amount of Rates per head of Population. 1928. H.M. Stationery Office. 2s. net.

The Journal of the Auctioneers' and Estate Agents' Institute of the United Kingdom. Vol. 8. Pt. 10. October, 1928. Issued only to members.

The Scottish Law Review and Reports of Cases in the Sheriff's Courts of Scotland. Vol. 44. No. 526. October, 1928. Glasgow: William Hodge & Co., Ltd. 2s. 6d. net.

Income Tax Up to Date. Rules and Regulations for the current income tax year (1928-29), with a Table showing what you must pay. Revised to date. H. J. Gully, F.C.A. August, 1928. Financial News, 111, Queen Victoria-street, E.C.4. 9d. net.

Title Deeds, Old and New. Being the Fourth Edition of "Title Deeds and the Rudiments of Real Property Law." Francis B. Stead (author of "Bankers' Advances," "Banker's Tests," etc.). 1928. pp. viii and 184 (with Index). Sir Isaac Pitman & Sons, Ltd. 5s. net.

Burn's Income Tax Guide. Seventh Edition. Covering 1928 Budget. John Burns, W.S. 247 pp. (with Index). The Richard Press, Ltd. 2s. 6d. net.

Transactions of the Cremation Society of England. No. XXXIX. 1928. 23, Nottingham-place. To non-subscribers, 1s. 6d., post free.

University of London—University College Calendar, 1928-29 *—Faculty of Laws Section.* Including the Inter-Collegiate Courses of Law by the Professors and Teachers.

Ministry of Health. Ninth Annual Report. 1927-1928. Cmd. 3185. H.M. Stationery Office. 5s. net.

Ministry of Health. Annual Local Taxation Returns, England and Wales, 1925-26. Pt. II and III. Comparative Local Financial Statistics. 1928. H.M. Stationery Office, Pt. II 15s., and Pt. III 4s. net.

Criminal Appeal Cases; 21 Cr. App. R., pp. 1 to 17 (Pt. I). 1928. Sweet & Maxwell, Ltd. 7s. 6d. net.

Ministry of Health. Reports on Public Health and Medical Subjects. No. 53. Outbreak of Paratyphoid Fever in Hertfordshire. W. Vernon Shaw, O.B.E., M.A., M.D. H.M. Stationery Office. 3s. net.

Persons in Receipt of Poor Law Relief (England and Wales). 1928. H.M. Stationery Office. 1s. 3d. net.

Ministry of Health. Proposals for Reform in Local Government and in the Financial Relations between the Exchequer and Local Authorities. 1928. Cmd. 3134. H.M. Stationery Office. 1s. net.

The English and Empire Digest with Annotations. Vol. 40. Sale of Land to Settlements. 1928. pp. cvi and 798. Butterworth & Co. (Publishers), Ltd.

NOTES OF CASES.

Court of Appeal.

Re **Villar; Public Trustee** *v.* **Villar.**

Lord Hanworth, M.R., Lawrence and Russell, L.JJ. 16th and 17th October.

Will—Settlement—Uncertainty—Perpetuity—Common Form.

A testator who died on the 6th September, 1926, by his will directed that his trustees should during the "period of restriction" hold his residuary estate upon trust to pay and divide the income equally *per stirpes* amongst his "participating issue" (an expression defined in the will), and also provided for the division of the capital amongst such issue after the expiration of that period. The period was defined as that ending at the expiration of twenty years from the day of the death of the last survivor of all the descendants of Her late Majesty Queen Victoria who should be living at the time of the testator's death. The testator left a widow, three sons, and two daughters, one of whom was a spinster and the other a married woman with two infant children. The Public Trustee and one of the sons of the testator proved the will, and so became trustees of the estate. The children of the testator claimed that the trusts of the residue were void for uncertainty. The Public Trustee therefore took out a summons asking for the determination of the question and for an inquiry as to the descendants of Queen Victoria living at the testator's death.

Astbury, J. (see Sol. J. 367), held that the trusts were not void for uncertainty and gave leave to apply for an inquiry but made no order for it, on the ground that if, as he hoped, his decision were reversed on appeal, no inquiry would be necessary. On an appeal by the children of the testator other than the married daughter

The Court, in dismissing the appeal, said that the testator had defined the period of restriction by reference to the lives of a group of ascertainable persons who were, as appeared from the evidence, about 120 or 130 in number at the present time, and the fact that it might in the future be difficult to ascertain which of them was the survivor and what was the date of his death was not sufficient reason to declare the trusts invalid.

Counsel: *Sir Thomas Hughes,* K.C., and *E. Beaumont* (for *J. W. F. Beaumont*), for the appellants; *Baden Fuller,* for the widow of the testator; *Topham,* K.C., and *Bischoff,* for the married daughter and two infant children; *Stamp,* for the Public Trustee.

Solicitors: *Church, Rendell, Bird & Co.,* for *Bird and Lovibond,* Uxbridge; *Gregory, Rowcliffe & Co.,* for *Thomas Broomhead,* Taunton.

[Reported by J. F. Iselin, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Re **Forster: Somerville** *v.* **Oldfield.**

Clauson, J. 22nd October.

Law of Property — Settlement — Will of Settled Property—Legal Estate—Vesting—Law of Property Act, 1925, 15 Geo. 5, c. 20, Sched. I., Pt. IV., para. 1, sub-para. 1 (*b*).

This summons asked whether the will, dated May, 1915, of a testatrix who died in December of that year, effectually exercised a power of appointment contained in the testatrix's marriage settlement, dated 1890, and how and in whom the property in the said settlement comprised vested. The said property was freehold, and under the settlement the trustees of the settlement were to stand possessed of it in trust to pay the income to the testatrix during the joint lives of herself

and her husband, and after the death of either, to the survivor for life in the case of the testatrix or until re-marriage in the case of her husband; and upon the survivor's death (in the events which happened), as the testatrix should by will appoint. The said will devised and bequeathed the realty and personalty comprised in the said settlement upon trust for two named daughters of the testatrix (parties to this summons) in the proportions respectively of two-thirds and one-third. Six children survived the testatrix; and her husband re-married in 1923.

CLAUSON, J., said that the will effectually exercised the power. The property was vested in the personal representatives of the testatrix on trust for sale. Thus, either the personal representatives might sell it, or the two daughters might call upon them to convey it to them as joint tenants upon the statutory trusts. They could not convey it to the trustees of the settlement, who, by reason of para. 1, sub-para. 1 (*b*) of Pt. IV, of the 1st Sched. to the Law of Property Act, 1925, could not call for such a conveyance.

COUNSEL: *Hecksher; G. D. Johnston; Buckmaster; F. J. Newman.*

SOLICITORS: *De La Chapelle, Thirlby & Co.; Faithfull, Owen, Blair, and Wright; P. B. Akerman.*

[Reported by K. R. A. HART, Esq., Barrister-at-Law.]

Curtis *v.* **French.** Eve, J. 31st October.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—"MISDESCRIPTION"—MISLEADING STATEMENT AS TO VACANT POSSESSION—NATIONAL CONDITIONS OF SALE.

This was an action by a purchaser for specific performance of a contract for sale of a cottage, or for damages in lieu thereof. The tenant had been given a year's notice to leave, expiring on 29th September, 1924, but since then every effort had been made, short of taking proceedings under the Rent Restriction Act, 1923, to induce the tenant to give up possession, but he refused to do so on the ground that he had nowhere else to live. At the sale the cottage was knocked down to the purchaser for £400, but the purchase had never been completed owing to the inability of the vendor to give possession. The particulars stated that the vendor had not pressed for possession but that the premises would be sold with vacant possession. The property was sold subject to the National Conditions of Sale, and a special condition provided that each lot should be sold subject to all tenancies, etc.

EVE, J., said the particulars were misleading and parts of them, like the statement about not pressing for possession, were untrue. The statement was calculated to create the impression that the tenant was willing to leave, if pressed, but that he had not been pressed. The particulars, however, were only part of the contract which incorporated the National Conditions of Sale, 1925, and certain special conditions. It seemed to him to be extremely unwise in sales held in the country not to incorporate in the same document general conditions of which the chances were that only a very small proportion of the persons bidding had the least knowledge. A copy of such general conditions should be included with the particulars at all such sales. The fact that the purchaser was induced to enter into a contract by a mis-statement could not, however, affect the construction. The purchaser did not now ask for specific performance, and in his lordship's opinion he could not succeed in his claim for damages. It was a very hard case, and he thought that there should be no costs on either side.

COUNSEL: *R. F. Roxburgh; Henry Johnston.*

SOLICITORS: *W. W. Box & Co.; Cooper, Bake, Fettes, Roche & Wade.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Mr. Alfred Edwin Whittingham, solicitor, of Weaverdale, Barony-road, Nantwich, left estate of the gross value of £20,544.

High Court—King's Bench Division

Tickner *v.* **Clifton.** Swift, J., Acton, J. 31st October.

LANDLORD AND TENANT—DEATH OF STATUTORY TENANT—ARREARS OF RENT—RELATIVE CONTINUING AS TENANT NOT LIABLE—NEW STATUTORY TENANCY CREATED—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 12 (1) (*g*).

Appeal from Judge Sturges, West London County Court.

Edward William Clifton, who had been a statutory tenant on a yearly tenancy of premises at Shepherd's Bush, W., since May, 1917, died on the 27th September, 1926, owing £25 10s. arrears of rent. His daughter, who had lived with him, continued to reside at the premises, and the landlord sought to recover the arrears from her. In a county court action the landlord claimed possession, rent due and mesne profits, which included the £25 10s. arrears due from the deceased. An order made for possession was stayed so long as the defendant paid the rent and £2 5s. a quarter off the arrears. She appealed.

SWIFT, J., said that the defendant occupied the premises as a statutory tenant and that her statutory tenancy began with her. She was not, as had been contended, either an executrix *de son tort*, or an equitable assignee of the term her father had held. She was not responsible for what occurred before her tenancy began and the appeal was therefore allowed, with costs.

ACTON, J., agreed.

COUNSEL: *A. A. Aretoom*, for the appellant; *H. Lloyd-Williams*, for the respondent.

SOLICITORS: *H. B. I. Schultess Young; Whittington, Son and Barham.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Eastbourne County Borough *v.* **Fuller & Sons.**
McCardie, J. 2nd November.

LOCAL GOVERNMENT—HIGHWAYS—DAMAGE TO ROAD SURFACE—EXCESSIVE WEIGHT AND EXTRAORDINARY TRAFFIC—NUISANCE—WRONGFUL ABUSE—HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878 (41 & 42 Vict., c. 77), s. 23.

In this action the plaintiffs alleged that, as highway authority they had incurred expenses amounting to £255 12s. 2d., owing to damage to East Dean-road, Eastbourne, caused by excessive weight and extraordinary traffic when two of the defendants' Fowler traction locomotives, drawing an eight-share steam plough and presser, and twelve-prong cultivator, a living van and a water van passed along it on the 14th July, 1926. They relied on the Highways and Locomotives (Amendment) Act, 1878. In the alternative they claimed the above sum as damages for either wrongful abuse or for nuisance at common law. The defendants denied that the plaintiffs had suffered damage or that they had incurred any extraordinary expenses, and contended that the damage, if any, arose from and was contributed to by the fact that the road was not suitable for carrying the traffic expected on it.

MCCARDIE, J., after referring to the facts, said that the claim could not succeed under the Act of 1878, either in respect of excessive weight or extraordinary traffic; the weights in the present case being normal, and the plaintiffs not having used that road before in that year. Further, in his opinion, the defendants' vehicles did not constitute a nuisance, and it was unnecessary to consider the distinction between nuisance and wrongful abuse. The action failed, and was dismissed, with costs.

COUNSEL: *Montgomery*, K.C., and *A. H. M. Wedderburn*, for the plaintiffs; *Croom-Johnson*, K.C., and *W. H. Moresby*, for the defendants.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *H. West Fovargue*, Eastbourne; *Joynson-Hicks & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

ANNUAL DINNER OF THE HARDWICKE SOCIETY.

H.R.H. THE DUKE OF YORK, K.G., AS THE GUEST OF HONOUR.

The annual dinner of the Hardwicke Society was held at the Hyde Park Hotel on Tuesday last, the 6th inst., the President (Mr. H. M. Pratt) occupying the chair. The guest of honour was His Royal Highness The Duke of York, K.G. The distinguished company present included The Most Hon. The Marquess of Reading, G.C.B., G.C.V.O., The Hon. Mr. Justice Swift, Sir F. Boyd Merriman, K.C., M.P. (Solicitor-General), The Earl of Halsbury, K.C., Sir John Seymour Lloyd, K.B.E., K.C. (Ex-President), Mr. H. Du Parcq, K.C. (Ex-President), The Hon. Sir Malcolm Macnaghten, K.C., M.P., Sir Cecil Walsh, K.C., Mr. W. W. Grantham, K.C. (Ex-President), Sir William Waterlow, K.B.E., The Hon. J. Pike Pease, Colonel Sir Stuart Sankey, K.B.E., C.V.O., Mr. R. C. Maxwell, O.B.E., B.A., LL.D., Mr. W. Heseltine, C.B., Mr. William Harding, O.B.E., Mr. Percival Clarke (Ex-President), Miss Enid Rosser, Mr. L. A. Abraham (Vice-President, 1927-8), Mr. G. G. Raphael (Hon. Secretary, 1927-8), Mr. C. H. Pearson (Hon. Secretary, 1928-9), Mr. Ifor Lloyd (Hon. Treasurer), Mr. H. C. Gutteridge (Ex-President).

In proposing the toast of the Hardwicke Society, The Duke of York said:—Not long ago he read somewhere that members of the Royal Family were "obvious" persons. He was not quite sure what that expression meant, so he thought he would look up the word "obvious" in the dictionary, and found one of the definitions given was "goes without saying." He had attended many dinners at which he had wished to be "obvious" and "go without saying," but that was not the case that night, for it gave him real pleasure to propose that toast, if only to show his gratitude for their courtesy in giving him such a delightful evening. The history of the society was probably well known to all of them. Originating somewhere about 1845, it took its name from one of the most famous Lord Chancellors this country had ever known—Lord Hardwicke—and among its members it had numbered many distinguished men. He might mention just one of their Presidents—Sir Edward Clarke—whose name was honoured throughout the British Empire. (Applause.) That he could not be there that evening was a matter of regret to them all, but they had with them a worthy representative in his son, Mr. Percival Clarke—himself an Ex-President of the society. He would like to pay a tribute to the work the society was doing. Sir Edward Clarke dedicated one of his publications to the members in these words, "*In recognition of the fact that in the meetings of the society I found my best training for the work at the Bar.*" He could have paid it no higher compliment. (Applause.) He feared he had little experience of the law, but it had fallen to his lot to hold many positions. He was president of hospitals and societies of every kind. He held commissions in all three fighting Services. He was a Maori chief, a boy scout—(laughter)—a draper, and last, but not least, a Bencher of the Inner Temple. But he had never been invited to become a judge, and so could not speak from personal experience of a legal education. Still, he continued, it seemed to him to involve two main principles—the training of the mind and the training of the tongue. There was no profession in which keenness of wit and intellect was more necessary than it was at the Bar. Accuracy and alertness of mind were essential, but were themselves of little use unless the possessor of those qualities could express himself clearly and tersely. He did not mean with such terseness as the American gentleman who asked a lady to dance by saying expressively, "Say, kid, lend me your form for a twist." (Laughter.) That was certainly concise, but he hardly thought that same gentleman could have been a member of the Hardwicke Society. There was nothing more delightful to hear than a reasoned, witty and well expressed speech. Was it not a fact that there was hardly any power in the world to day which could sway the masses with such telling effect as oratory? And yet, how few really good speakers there were. Such a man could be of real service to his country, and, therefore, in giving students and young barristers opportunities for speaking, and training them, the society was performing a work which was of the greatest national importance, and when one reads some of the great names who had been members of their society, and what they had accomplished, it was clear their work was being performed with marked success. (Loud applause.)

The PRESIDENT, in returning thanks, made reference to the Society's work during the past year. He said that that work had been most successful. There had been a steady influx of new members, the attendance at the meetings of the Society had been well maintained, and the standard of debating had been much above the average. But he should like to say that the success of the Society had been due to the work of the committee, several of whom he particularly referred to. (Applause.)

Mr. IFOR LLOYD (Hon. Treasurer) proposed "The Bench and the Bar," observing that the judges of this country were selected, as the judges of other countries were not, from the members of the Bar, and that to-day the relations between the Bench and the Bar were more harmonious than they had been at any time in the past. The judges were kindly and courteous, especially to the younger members of the Bar, and the members of the Bench and the Bar had mutual confidence in each other. The companionship which existed among the different members of the profession was unique among professions. (Hear, hear.)

Mr. Justice SWIFT, in a speech which was replete with anecdote, responded for the Bench.

Sir F. BOYD MERRIMAN, K.C., M.P. (Solicitor-General) returned thanks on behalf of the Bar. The ideal of the judge, he said, was to do justice and see that every client got "a square deal." That end might not always be attained, but, at any rate, it was the ideal in view. And because he believed that the same ideal animated the Bar, he was proud to have responded to the toast.

THE MARQUESS OF READING, G.C.B., G.C.V.O., proposed the health of "The Guests." He said it gave the Benchers of the Middle Temple great pleasure in having the Society as their guests at the room in which they held their meetings. The Society was a great society. One had only to look at the names of the men who had passed through it to be convinced of that. Many of them had attained to the highest offices. He had always considered the Society a very real thing. It taught its members to think standing on their legs. Very often a speech was valueless because thought was obscured. It taught the whole value of discussion, and of replying to the arguments of an adversary, and this was invaluable to the young members of the Bar. There was no profession which offered so many inducements, so many glittering prizes to those who were successful, no profession in which jealousy played so small a part, none in which the members were more ready to recognise merit. But it needed that its members should work hard. He was reminded of what that great veteran who had recently died once said to him: "Now, young man" ('young Rufus,' as he called him), "when you are called to the Bar don't look upon yourself as a man who is his own master, who can come when he likes and go when he likes, but rather regard yourself as a clerk who has to be at his place at a particular time in the morning, and must not leave until a particular time at night; and if you only follow that advice, I have no doubt as to what the future will have in store for you." He believed that to be the best advice to give to a young man, and he gave it to his friends, and he gave it to all members of that Society. He wished to impress upon the younger men present that they should concentrate upon their work; that they should give constant attention to it—this would be a very great asset for the future. The young man was apt to be carried away by his enthusiasm, his thoughts taking him into the romantic regions of the profession, and he already saw himself a learned occupant of the Bench, but in the end he will have achieved something, and he (the speaker) believed that in order to achieve that something, there was no better profession than that of the Bar. If they could not all become judges of the High Court, or even of the county court, there was the chance before them, and he would say to the young men at the Bar: "Go forward, don't be discouraged, make up your mind that you will succeed. But in order to do that never fail to concentrate on that purpose, and then you will be certain of some success." In concluding he proposed the health of "The President," to which Mr. PRATT suitably responded.

Societies.

Gray's Inn.

JUDGMENT BY LORD ATKIN.

A Moot was held at Gray's Inn on Monday last before Master Lord Atkin. The question argued was as follows:—

A is a member of a club the rules of which provide that no member shall drive his motor car to the danger of the public under pain of expulsion. A is convicted by justices of the offence named. Before the committee of the club he admits the conviction, but denies that he was guilty and points out the hardship to himself of the rule.

The committee find that the offence was committed, but instruct the secretary to write a letter to A intimating that the committee are prepared in substitution for expulsion to accept the payment of £50 to the funds of the club and that in default of payment they will proceed to expulsion. The letter ends: "I have therefore to request the favour of a cheque for £50 within three days."

The secretary and the members of the committee are indicted for uttering a letter demanding of A with menaces and without reasonable and probable cause £50. They are tried at the assizes.

The learned judge directed the jury that the letter contained menaces and that the accused had no right to demand money from A as the price of abstaining from their legal right to expel him.

The accused are convicted and sentenced to penal servitude for life. They appeal against conviction and sentence.

Lord Atkin, in giving judgment, said that the case was of particular interest in that it involved a difference of opinion between three justices of the Court of Criminal Appeal and three lords justices of the Court of Appeal. The case depended on s. 29 of the Larceny Act, 1916. There was no reason at all why the club should not arrange that the offence committed against its rules should be compounded for a less onerous punishment than that provided by the rules. There was no doubt that the club was doing what it had a legal right to do. It was not necessary for the purposes of this case to decide what the word "menace" meant. The case could be decided on the point that there was no evidence of a lack of reasonable and probable cause; and there was certainly no misdirection. The test whether the threat was to do something lawful was not enough. This case must be decided on the absence or otherwise of reasonable and probable cause, and in his view there were no facts to go to the jury to indicate the absence of reasonable and probable cause.

With regard to the question as to whether the Court of Appeal bound the Court of Criminal Appeal, Lord Atkin had little doubt that the Court of Appeal, which sat as a branch of the Supreme Court, bound the judges of the King's Bench sitting as a Court of Criminal Appeal. In his view, there was no authoritative decision to the contrary. In this case there was no evidence of an absence of reasonable and probable cause, and the conviction was therefore quashed and the prisoners released.

"Counsel" for the appellants were Mr. T. Shortland Jones and Mr. Mackintosh. For the Crown, Mr. Shannon and Mr. J. A. Wharton.

The following Masters of the Bench were present: Master Hinde, Master Sir Cecil Walsh, K.C., the Treasurer, Master Dummett, Master Manisty, K.C., Master Keogh, Master Bernard Campion, K.C., and Master Ross-Brown.

United Law Society.

A meeting of the society was held in the Middle Temple Common Room, on Monday, the 5th inst. Mr. F. B. Guedalla in the chair. Mr. F. W. Yates moved: "That in the opinion of this house the case of *Vosper* v. *Great Western Railway*, 1928, 1 K.B. 340, was wrongly decided." Mr. G. W. Tookey opposed. Messrs. Shanly, Wood-Smith, S. A. Redfern, and Pritchard having spoken, Mr. Yates replied. On the motion being put, the house was equally divided, whereupon the chairman gave his casting vote against the motion, which was accordingly declared lost.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall on Thursday the 1st inst., Mr. William Winterbotham in the chair. The other directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. H. B. Curwen, Mr. P. E. Marshall, Mr. J. R. H. Molony, Mr. A. E. Pridham, Mr. J. E. W. Rider, Mr. W. M. Woodhouse and the secretary (Mr. E. E. Barron). The sum of £200 was voted for the relief of deserving cases, and other general business transacted.

Royal Society of Arts.

SWINEY PRIZE FOR WORK ON MEDICAL JURISPRUDENCE.

The next award of the Swiney Prize—a silver cup of the value of £100 and money to the same amount—to the author of the best published work on Medical Jurisprudence, will take place in January, 1929, on the eighty-fifth anniversary of the donor's death. The award is made jointly by the Royal Society of Arts and the Royal College of Physicians, and any person desiring to submit a work, or to recommend any work for the consideration of the judges, should do so by letter addressed to the Secretary of the Royal Society of Arts, John-street, Adelphi, London, W.C.2, not later than Friday, the 30th November.

Bristol Incorporated Law Society.

ANNUAL MEETING.

The following report was approved and adopted at the fifty-eighth annual meeting of the Society, held on Monday, the 8th ult., the President (Mr. E. J. G. Higham) in the chair, viz.:—

LEGISLATION.—The Council draw attention to the following Acts of Parliament, 17 & 18 Geo. 5:—Landlord and Tenant; Mental Deficiency; Road Transport Lighting; Unemployment Insurance; 18 & 19 Geo. 5:—Currency and Bank Notes; Industrial and Provident Societies (Amendment); Patents and Designs (Convention); Representation of the People (Equal Franchise); Finance; Solicitors; Administration of Justice; Food and Drugs (Adulteration); Easter; Criminal Law (Amendment); Companies; Rating and Valuation (Apportionment).

The following measures were passed by the National Assembly of the Church of England and received the Royal Assent in 1927: Clergy Pensions (Amendment); New Dioceses (Transitional Provisions). In 1928: Ecclesiastical Commissioners (Provision for Unbeneficed Clergy); Tithe (Administration of Trusts); Clergy Pensions (Amendment).

POOR PERSONS COMMITTEE.—This Committee during the second year of its existence (April 1927-March 1928) dealt with thirty-two applications for legal assistance. Of these fifteen were granted, one deferred, one withdrawn, one instructed to apply to London, and fourteen refused. All fifteen applications granted have been allotted to solicitors to conduct. Eighteen divorce cases have been heard, and a decree *nisi* has been granted in each case; one nullity suit was also heard. The Council desire to thank those solicitors who have undertaken the conduct of these cases, and again ask members who have not already done so to allow themselves to be placed on the rota, so that the work may be fairly distributed.

LEGAL EDUCATION—SCHOOL OF LAW.—A grant of £600 has again been received this year from The Law Society by the Bristol and District Board of Legal Studies. Courses of lectures have been given as follows: Nine for Final Students, three of these being given by Mr. Malcolm M. Lewis, M.A., LL.B., Cantab., Director of Legal Studies, on Conveyancing; three by Mr. A. M. Wilshere, M.A., LL.B., on Common Law, and three by Mr. W. W. Veale, LL.M. (Lond.), on Equity; and six for Intermediate Students on the Subject Matter of Stephen's Commentaries, three being given by Mr. Lewis and three by Mr. Veale. Mr. Lewis also gave two courses of lectures on Constitutional Law and one on Roman Law. The total number of students attending these lectures was fifty-four, being one more than the previous year. Four attended from Bath, one from Bridgwater, one from Burnham-on-Sea, two from Cheltenham, one from Clevedon, one from Frome, one from Glastonbury, four from Gloucester, one from Melksham, one from Swindon, one from Trowbridge, one from Wells, four from Weston-super-Mare, one from Wootton-Bassett, and there were four Bar students. The remaining twenty-six were local students.

The Law Society have appointed Mr. C. F. Loriston Clarke as their representative on the Bristol Board of Legal Studies, and Mr. W. S. Clarke as a member of the Legal Education Committee in succession in each case to the late Mr. Trapnell.

During the year nineteen articled clerks passed the examinations of The Law Society, of whom six passed the Final Examination, four the Intermediate, four the Intermediate (Legal Portion) and five the Book-keeping portion only.

A prize in books to the value of £3 3s. has been awarded to Mr. K. H. Bain, LL.B. (Lond.), articled to Mr. F. J. Press, who obtained a Third Class at the Honours Examination held in November last, and a similar prize to Mr. N. Beare, articled to the late Mr. F. J. Ridler, LL.B., and to Mr. W. C. H. Cross, LL.B., who obtained a Third Class at the Honours Examination held in March last.

GENERAL CONDITIONS of 1928.—A new edition of the General Conditions has been issued in the course of the year, in the

draft of which amendments were made by The Law Society, in accordance with the views expressed by this Council. A circular letter on the subject, with a gratuitous copy of the new Conditions, was sent to all members.

The Council regret to have to report the deaths of Mr. H. C. Trapnell, President of the Society for the year 1908-9, also Member of the Council from 1903 to 1914, and of Mr. F. Spofforth.

The Council beg to acknowledge with thanks the presentation of the following books to the library:—

Boyle's Court Guide, 1831, Gifford's Complete English Lawyer, 1824, Kearsley's Complete Peerage of England, Scotland and Ireland, 1796, Law Lists, 1815, 1827, 1828, 1830, 1841, London Post Office Directory, 1824, 1831, Robson's Royal Court Guide and Peerage, 1839, Royal Kalendar, 1780 and 1815—by R. M. E. Reeves, Esq.; Law of Principal and Agent—by Dr. A. W. Peake.

The Medico-Legal Society.

(President: Sir WILLIAM WILLCOX, K.C.I.E., C.B., C.M.G., F.R.C.P.)

An ordinary meeting of the Society will be held at 11, Chandos-street, Cavendish-square, W.1, on Thursday the 22nd November, at 8.30 p.m., when a paper will be read by Dr. L. A. Weatherly on "Juvenile Psychologic Delinquencies—their Origin and Treatment," which will be followed by a discussion.

The Hardwicke Society.

At a meeting held in the Middle Temple Common Room, on Friday, the 2nd inst., Mr. L. A. Abraham, Vice-President, in the chair, Mr. J. H. Penston (Lincoln's Inn) moved:—"That rationalisation should be the aim of British industrial policy." Mr. H. V. Lloyd-Jones (Inner Temple) opposed the motion. Messrs. W. H. Gunn, H. J. Sweeney, Walter Stewart, L. F. Sturge, Gerald Thesiger, and Mr. H. J. Baxter, and Miss Bright Asford having spoken, the opener replied, when a vote was taken. The chairman declared the motion carried by eight votes.

Legal Notes and News.

Honours and Appointments.

Mr. W. H. POLLITT, LL.B., solicitor, Town Clerk of Wednesbury, has been appointed Town Clerk of Nuneaton. Mr. Pollitt was admitted in 1911.

Sir FRANCIS GEORGE NEWBOLT KNIGHT, K.C., J.P., M.A., F.C.S., A.R.E., Official Referee of the Supreme Court, has been appointed Honorary Professor of Law in the Royal Academy of Arts. Sir Francis was called by the Inner Temple in 1890, took silk in 1914, and is the author of two well-known legal works, viz., "The Sale of Goods Act, 1893," and "Summary Procedure in the High Court."

Mr. F. W. FORBES LATHOM, M.C., solicitor, Luton, has been appointed Clerk to the Dunstable Justices in succession to the late Mr. William Austin. Mr. Lathom, who was admitted in 1904, also holds the appointment of Clerk to the Justices of the Luton Division.

Mr. JOHN PERRIN ERRINGTON, solicitor, Carlisle, has been appointed Clerk to the County Justices of the Carlisle Division. Mr. Errington was admitted in 1905, and also holds the appointment of Deputy Registrar of the Carlisle County Court.

The following arrangements as to the Metropolitan Police Courts took effect on Monday last: Mr. W. H. S. OULTON, the Lambeth magistrate is transferred to Tower Bridge Police Court, and Mr. HAROLD MCKENNA, from Greenwich and Woolwich, has succeeded him. Mr. J. B. WATSON left Greenwich and Woolwich and has gone to North London. Mr. BERNARD CAMPION, K.C., has been assigned to the South Western Police Court, and Mr. GRIFFITH JONES and Mr. J. H. HARRIS to Greenwich and Woolwich.

Mr. J. J. DENNIS (member of the Dominion Parliament for Joliette) has been appointed a Judge of the Superior Court of Quebec, and Mr. L. H. DEMERS has been appointed Admiralty Judge for the Quebec District.

Wills and Bequests.

Alderman William Benjamin Francis, solicitor, of Romilly-road, Cardiff, head of the firm of W. B. Francis and Son, solicitors, and a former Lord Mayor of that City, left estate of the gross value of £4,035.

The Right Hon. Richard Burdon Viscount Haldane, of Cloan, O.M., K.T., of Cloan, Auchterarder, Perthshire, and of Queen Anne's-gate, S.W., who died on 19th August, aged seventy-two, left, in addition to considerable real estate, unsettled personal estate valued for probate at £70,406, of which £69,334 is personal estate in Great Britain. Included in the valuation is the estimated value of MSS. at Cloan "estimated not to exceed £2,000," and War Loans, etc., valued at £18,412. Details of his gifts for education were published in *The Times* of 30th August. He also left: £200, subsequently increased by codicil to £500, to his butler, Charles Williams; and £100 to each of his domestic servants who at the time of his death had been two years or more in his service at Queen Anne's-gate, London, or at Cloan.

The will is witnessed by the Bishop of Durham and the Dean of St. Pauls, and one of the codicils is witnessed by the Archbishop of Canterbury and Mrs. Davidson.

BAR EXAMINATIONS.

REDUCED TO THREE EACH YEAR.

Beginning in 1929, there will be only three examinations for Call to the Bar in each year, instead of four as hitherto. These will be before the Hilary, Trinity, and Michaelmas law terms, the Easter examination having been abandoned. In making this change the Council of Legal Education have had in mind the very short interval between the Easter and Trinity examinations. The new arrangement will effect a more satisfactory distribution throughout the year.

Disparaging comparisons used to be made between the examinations that Bar students sat and the much more severe tests applied to students for the solicitor profession. And, in fact, up to a few years ago the difference was very marked. Latterly, however, there has been a stiffening up, and the Bar examination test is now very far from being a formality.

BYE-LAW TO PROTECT WILD FLOWERS.

At a meeting on the 6th inst. of the Herts County Council, a bye-law was passed making it an offence to uproot from any part of the county wild flowers or ferns. The bye-law is the result of complaints that the Hertfordshire woods and lanes have in some cases been almost denuded of wild flowers by motorists and others. A further bye-law made by the council prohibits the littering of county highways with paper or other waste material.

LORD HALDANE'S LIFE-STORY.

Shortly before he died Viscount Haldane wrote the story of his life and an account of his friendships. He did so quite simply, desiring merely to set down events as he had encountered them and men as he had met them. This simplicity is reflected in the title of the book, which Hodder and Stoughton will publish in the spring, for it is just his name, "Richard Burdon Haldane."

JUVENILE COURTS.

COMMITTEE OF INQUIRY APPOINTED.

The Home Secretary has appointed a committee to inquire into the working of the police courts and juvenile courts in the metropolitan police district and to consider and report, after consultation with the magistrates, whether any changes are desirable in the organisation of work at the courts, or of the work of the courts as a whole, or as regards the jurisdiction, in the district, of police court magistrates and county justices respectively. The members of the committee are: Lord Cornwallis (Chairman), Sir William Bull, M.P., Lieutenant-Colonel Sir Vivian Henderson, M.P., Mr. A. Locke, Mr. J. F. Moylan, and Mr. Roland G. Oliver, K.C. The secretary of the committee is Mr. S. Hoare, of the Home Office, to whom all communications on the subject should be addressed.

FREE LEGAL PROFESSIONAL ASSISTANCE TO THE POOR.

The "Good Counsel" Ball will be held at the Hyde Park Hotel in aid of The Society of Our Lady of Good Counsel (which gives free legal professional assistance to the poor, irrespective of race or creed, *in all the courts*), on Friday, the 16th inst., when the hostesses will be Princess Reginald de Croy, The Lady Winifrede Elwes, The Hon. Mrs. Frank Russell and Mrs. Raymond Asquith. Dancing will be from 10 p.m. to 3 a.m., and Pilbeam and his band will be in attendance. A cabaret performance will be given at midnight by well-known West End artistes. The tickets are 25s., and include supper and buffet, and may be obtained from any member of the general committee, or from the hon. secretary, Mr. S. Seuffert, 30, Maiden-lane, W.C.1.

PRISON REFORM.

Lord Lytton's Suggestions.

Scientifically conducted reformatories to displace penal prisons were advocated by Lord Lytton at the annual meeting of the Howard League for Penal Reform, held at the Friends' House, Euston-road, recently.

Lord Lytton said he thought humanising ordinary prison treatment seemed to him only to result in deadening public consciousness, and to blunt public views as to the inherent cruelty, uselessness and stupidity of any penal system which did not succeed in preventing those who experienced it from returning to gaol. The best substitutes for systems of retribution were systems of reformation. The legal machinery for providing the latter in Britain was really in advance of public opinion and there were many sensible magistrates on the Bench to-day who would be only too glad to make use of such reformatories as he suggested if they existed in the machinery of the Probation of Offenders Act. He thought the Howard League might usefully devote its attention to securing the provision of reformatory substitutes, and upon educating public opinion into distinguishing between the two. The method of procedure in such reformatories should not be based upon punishment, but upon the reformation of character, the study of which was just as complicated and just as necessary as the science of medicine or the science of engineering, and it could only be learnt by those who thought it was possible of achievement.

LINCOLN'S INN HALL.

Re-opening by the King.

The King will be accompanied by the Queen when he re-opens the renovated Old Hall of Lincoln's Inn on Thursday, the 22nd inst. The proceedings will be strictly private and very short, without any speech-making.

Their Majesties will enter the Inn by the gateway in Lincoln's Inn-fields and proceed straight to the Old Hall, the door of which will be opened by the King with a golden presentation key. The roadway between the entrance gate and the hall will be enclosed, and to this area a limited number of members of the Inn and a few students will be admitted. Little space is available inside the Old Hall, and only Masters of the Bench and King's Counsel who are members of the Inn, with one lady each, can be accommodated.

On leaving the Old Hall their Majesties will walk to the New Hall and have tea in the Benchers' Room. Others will then be able to inspect the renovated hall. It is possible that a ballot will have to be taken for admission to the enclosure.

LEGAL & GENERAL ASSURANCE SOCIETY LIMITED.

New Director.

The Honourable Sir Malcolm M. Macnaghten, K.B.E., K.C., M.P., has been elected a Director of the Legal & General Assurance Society Limited. Sir Malcolm Macnaghten was called to the Bar in 1894 and took silk in 1919, and has been M.P. for the City and County of Londonderry (Ulster, Unionist) since 1922. He is Commissary of the University of Cambridge and Recorder of Colchester.

Court Papers.

Supreme Court of Judicature.

Date.	Rota of Registrars in Attendance on Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Nov. 12	Mr. Ritchie	Mr. Hicks Beach	Mr. *Ritchie	Mr. Synge
Tuesday .. 13	Bloxam	Synge	Synge	*Jolly
Wednesday 14	Jolly	More	*Jolly	*Ritchie
Thursday.. 15	Hicks Beach	Ritchie	Ritchie	*Synge
Friday 16	Synge	Bloxam	*Synge	Jolly
Saturday .. 17	More	Jolly	Jolly	Ritchie
	Mr. Justice Maugham.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday Nov. 12	Mr. Jolly	Mr. Hicks Beach	Mr. Bloxam	Mr. More
Tuesday .. 13	Ritchie	*Bloxam	*More	Hicks Beach
Wednesday 14	Synge	More	*Hicks Beach	Bloxam
Thursday.. 15	Jolly	*Hicks Beach	*Bloxam	More
Friday 16	Ritchie	Bloxam	*More	Hicks Beach
Saturday .. 17	Synge	More	Hicks Beach	Bloxam

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 22nd November, 1928.

	Middle Price 7th Nov.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	86¾	4 12 0	—
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	101½xd	4 18 6	4 17 6
War Loan 4½% 1925-45	97½xd	4 12 0	4 14 0
War Loan 4% (Tax free) 1929-42	100¼	4 0 0	3 19 6
Funding 4% Loan 1960-1990	89½	4 9 6	4 11 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94¼	4 5 0	4 7 6
Conversion 4½% Loan 1940-44	99½	4 11 0	4 13 0
Conversion 3½% Loan 1961	77⅝	4 10 0	—
Local Loans 3% Stock 1921 or after	64¾	4 13 0	—
Bank Stock	262	4 11 6	—
India 4½% 1950-55	93	4 17 0	4 19 6
India 3½%	71½	4 18 0	—
India 3%	61	4 18 0	—
Sudan 4½% 1939-73	97	4 13 0	4 15 0
Sudan 4% 1974	85	4 12 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	82	3 13 0	4 8 0
Colonial Securities.			
Canada 3% 1938	87	3 9 0	4 16 0
Cape of Good Hope 4% 1916-36	94	4 5 0	4 19 6
Cape of Good Hope 3½% 1929-49	82	4 5 6	4 18 6
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 0
Gold Coast 4½% 1956	95	4 14 6	4 17 6
Jamaica 4½% 1941-71	96	4 14 0	4 17 6
Natal 4% 1937	94	4 5 6	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98xd	5 2 0	5 3 0
New Zealand 4½% 1945	98	4 12 0	4 17 6
New Zealand 5% 1946	105	4 15 6	4 14 0
Queensland 5% 1940-60	98	5 2 0	5 0 6
South Africa 5% 1945-75	104	4 16 0	4 16 0
South Australia 5% 1945-75	99	5 1 0	5 2 0
Tasmania 5% 1945-75	102	4 18 0	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 13 0	—
Birmingham 5% 1946-56	103	4 17 0	4 15 0
Cardiff 5% 1945-65	102	4 18 0	4 16 6
Croydon 3% 1940-60	71	4 5 0	4 16 0
Hull 3½% 1925-55	77	4 10 0	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54xd	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½xd	4 13 0	—
Manchester 3% on or after 1941	65	4 12 6	—
Metropolitan Water Board 3% 'A' 1963-2003	65	4 12 0	4 12 6
Metropolitan Water Board 3% 'B' 1934-2003	66	4 11 0	4 12 6
Middlesex C. C. 3½% 1927-47	84	4 3 6	4 17 0
Newcastle 3½% Irredeemable	74	4 14 6	—
Nottingham 3% Irredeemable	64	4 12 6	—
Stockton 5% 1946-66	103	4 17 0	4 19 0
Wolverhampton 5% 1946-56	103	4 17 0	4 19 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	92½	5 8 0	—
L. & N. E. Rly. 4% Debenture	75	5 6 6	—
L. & N. E. Rly. 4% Guaranteed	70	5 14 9	—
L. & N. E. Rly 4% 1st Preference	61	6 10 0	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	76½	5 5 0	—
L. Mid. & Scot. Rly. 4% Preference	68½	5 12 0	—
Southern Railway 4% Debenture	79	5 1 0	—
Southern Railway 5% Guaranteed	97	5 4 0	—
Southern Railway 5% Preference	88	5 13 6	—